IS THE INVESTOR VISA PROGRAM AN UNDERPERFORMING ASSET?

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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IS THE INVESTOR VISA PROGRAM AN UNDERPERFORMING ASSET?

THURSDAY, FEBRUARY 11, 2016

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 2:16 p.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Chabot, Issa, King, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Collins, DeSantis, Walters, Buck, Ratcliffe, Trott, Bishop, Conyers, Lofgren, Jackson Lee, Chu, DelBene, Jeffries, and Cicilline.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief; Zachary Somers, Parliamentarian & General Counsel; Kelsey Williams, Clerk; George Fishman, Chief Counsel, Subcommittee on Immigration and Border Security; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian & Chief Legislative Counsel; Gary Merson, Chief Immigration Counsel; Micah Bump, Minority Counsel; Joe Ehrenkrantz, Legislative Aide; and Rosalind Jackson, Professional Staff Member.

Mr. GOODLATTE. Good afternoon. The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time. We welcome everyone to this afternoon's hearing on "Is the Investor Visa Program an Underperforming Asset." I'll begin by recognizing myself for an opening statement.

In 1990, Congress created the Investor Visa Program, EB-5 for short. About 10,000 green cards each year go to aliens who invest in a business and will create 10 jobs. Congress' goal was to create new employment for U.S. workers and to infuse new capital into the country and to target investments to rural America and areas with particularly high unemployment, areas that can use the job creation the most. Finally, Congress was clear that the goal was not to provide immigrant visas to wealthy individuals.

I am a supporter of the Investor Visa Program and believe that it has contributed in real ways to economic development. Unfortunately, over the years the program has strayed further and further away from what Congress envisioned. It is thus not performing at the high level that we deserve.

The Immigration Act of 1990 provided that alien investors must invest $1 million. However, the Department of Homeland Security may in the case of investments made in a targeted employment area, rural or high unemployment, specify a lower amount. Since 1990, over 25 years, this has been $500,000.

Finally, DHS has the authority to increase the minimum investment amounts. Over the last quarter century, the minimum investment amounts have never been adjusted for inflation. As a result, the real value of each investment has fallen by almost 50 percent, depriving the U.S. economy of billions of dollars a year.

The Department of Homeland Security now plans to take the long-overdue step of adjusting the levels to account for inflation. Congress wanted to incentivize investments through a lower investment amount in areas with a scarcity of jobs that find it hard to attract capital. As DHS has stated, Congress did this "in order to spur immigrants to invest in firms that are principally doing business in and creating jobs in areas of greatest need."

Congress' expectation was that the vast majority of EB-5 investors would invest $1 million. Yet, last year almost all investor visas went for $500,000. Why? Well, as one EB-5 attorney has put it, most investors are interested in realizing permanent residency for a lower price tag, the logic being, why pay $1 million for a green card when I can get it for $500,000?

Not surprisingly, this has led to rampant gerrymandering. As DHS Deputy Secretary Alejandro Mayorkas has stated, this involves the deliberate drawing of TEAs to include prosperous areas that should not be subject to the reduced capital requirements.

Let me give one example. A proposed hotel and conference center in Laredo, Texas, was located in a census tract with 1.4 percent unemployment, far less than the 12.5 percent required to be a TEA. So what did the project do? Here is a map of the project stretching 200 miles, all the way to the high unemployment area of Brownsville, Texas, in order to make the numbers work.

And here is the vaulted conservatory with baby grand piano at the 926-foot Four Seasons Hotel and Private Residences at 30 Park Place in Tribeca, which describes itself as "perfectly pitched luxury," that will, "introduce a new caliber of luxury living." Beverly Hills magazine says it is "poised to be one of Manhattan's most prestigious addresses," and a "new paradigm in sophisticated living." Prices vary from $2.6 million to over $60 million for one condo in that building.

30 Park Place wanted to market EB-5 visas for $500,000. However, since the unemployment rate there is only 3.8 percent, New York State developed a project map that went upstream along the East River in order to lasso enough high unemployment areas to qualify.

Unfortunately, the Department of Homeland Security has facilitated such abusive gerrymandering. The USCIS accepts as binding maps approved by State agencies, even though, as The Wall Street Journal points out, they are eager for economic development and have little stake in Federal immigration policy.

Projects in affluent areas will always get the lion's share of EB-5 investments. Even if immigrants have to invest more, they prefer the higher degree of safety and the prestige.

However, we want to ensure a healthy percentage of projects locate in rural and depressed areas. Even if we could determine that a project's workers commute from high unemployment areas, which generally can't be done, that is not enough. We want to revitalize distressed areas, and to do that, projects actually have to be located in those areas.

Let me mention two other issues. First, in instances where a project is financed by EB-5 and conventional capital, the Department of Homeland Security allows foreign investors to receive credit for all the jobs to be created, even those paid for by other people's money. DHS' inspector general has concluded that DHS regulations "allow foreign investors to take credit for jobs created with U.S. funds"—in one case, even though EB-5 funds accounted for only 18 percent of the capital. This practice makes a mockery of the job-creation goal of the EB-5 program.

Finally, as I stated, visas for the wealthy was not a goal of the EB-5 program. It was to attract investors with entrepreneurial talent. As Phil Gramm stated during Senate consideration: "If people have been successful in business, they can bring that talent, and the fruits of that talent, a million dollars, to this country."

However, currently aliens can acquire investment funds through inheritance or a gift and there is no real regulatory requirement that they be entrepreneurs. They can simply be limited partners with no role in management. It is not surprising that the vast majority of EB-5 investors now are limited partners. If the EB-5 program is reformed, it can be become a turbo-charged engine for economic growth.

I look forward to today's hearing. And I would add that if we're not successful in making reforms for this program, the program is going to either expire or become irrelevant because of the enormously long waiting list that has already developed for these green cards. Those who have profited from this are killing off a program that is intended to create jobs and real economic development in this country.

I now recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Mr. Chairman, for a very strong set of observations to begin this hearing.

We're focusing today on the EB-5 Immigrant Investor Program. When Congress established the program in 1990, the intention was to create jobs for American citizens and to bring new investment capital to the United States.

I believe the EB-5 program can have a positive effect on distressed urban and rural communities by providing a source of jobs and investment. However, there are fundamental questions about how the program is currently being used and whether adequate integrity safeguards exist.

To begin with, the current practices used to draw targeted employment areas must be reformed. To help incentivize investment and job creation in rural or high unemployment areas, the EB-5 program offered a reduced investment level of $500,000 for projects in designated target employment areas.

However, as reported by The Wall Street Journal, as well as many other news sources, the vast majority of EB-5 investment

funds are going to projects in some of America's most affluent areas that qualify as targeted employment areas only because of gerrymandering. By stringing census tracts together from high unemployment neighborhoods to wealthy ones, project developers have been able to take advantage of the lower targeted employment area investment level while still investing in projects in more desirable and affluent areas.

This practice has been strongly criticized by the Leadership Conference on Civil Rights. It notes that the EB-5 Regional Center Program has dramatically deviated from its original purpose: to spur job creation and development in rural and high unemployment areas. Steering investments to projects in our cities' wealthiest neighborhoods at the expense of urban and rural communities that need it most is not what Congress intended when it established targeted employment areas and the lower investment level.

The congressional district, for example, that I represent suffers from an unemployment rate of more than 300 percent the national average. I'm pleased to say today that we are starting to come back, but it's slow and tough. But for those Americans living in urban poverty, in my city of Detroit and in many other cities across the country, manipulation of targeted employment areas has diverted a potential source of jobs and neighborhood improvement away from those it was intended to help.

As the Leadership Conference points out, it is not enough to have development in more affluent areas where low-income workers might commute to, because the projects will still leave these communities of concentrated poverty no better off in terms of development and infrastructure after their conclusion.

Also, the EB-5 program suffers from the absence of good data on projects and jobs created. In order to receive a green card, a foreign investor must prove that the investment will create at least 10 jobs for U.S. workers. Under the Regional Center Program, investors can account for the 10 jobs by counting direct, indirect, and induced jobs. I wonder what an induced job is. These indirect and induced jobs are calculated by econometric models.

While some data exists on the more than $13 billion of foreign direct investment since 2008, there's very little hard information on actual jobs created by EB-5 regional centers. We don't know whether these are jobs that are paying a living wage, whether they offer long-term employment, and whether they have benefited workers from distressed communities. The AFL-CIO shares these concerns and states that increased data will shed light on whether the program is meeting its mandate to spur growth and create jobs and in underserved areas.

So in conclusion, I remain committed to working with Chairman Goodlatte and others on this Committee to improve the EB-5 program. The reforms that Chairman Goodlatte, Senate Judiciary Chairman Grassley, Senate Judiciary Ranking Member Leahy, and I negotiated last year demonstrate that meaningful, bicameral, bipartisan reform is possible.

I thank the Chair, and I return any time remaining.

Mr. GOODLATTE. The Chair thanks the gentleman.

It is now my pleasure to recognize the Ranking Member of the Subcommittee on Immigration and Border Security, the gentlewoman from California, Ms. Lofgren, for her opening statement.

Ms. LOFGREN. Thank you, Mr. Chairman.

The EB-5 investor visa has proven to be an important job creation program. It provides financing to public-private projects, infrastructure, and other ventures, including nursing home facilities for senior citizens outside Dallas, Texas, a charter school in Buffalo, New York, and redevelopment of the Hunters Point Shipyard in the Bay area.

Now, my State of California took steps to reform its policy to avoid gerrymandering, and in my own district it has allowed, the EB-5 program has allowed a new hotel to be constructed near the airport to help revitalize the San Jose airport corridor. This project was, in fact, the first hotel built in that airport area in 20 years.

Yet, as important as the EB-5 financing has been since the banking and economic crisis of 2008, it pales in comparison to the potential of a visa program for startup entrepreneurs to create new American jobs and businesses.

I support long-term reauthorization of the EB-5 program, so long as it includes much-needed reforms. The required investment levels are outdated, immigrant investors need security protections, and government agencies charged with oversight and enforcement need new authorities.

I support reform of the targeted employment area requirements so that we ensure that EB-5 investments result in job creation in communities that need it most, whether they be urban or rural. In this respect, it is important that any EB-5 reform be balanced so that communities across the country have the opportunity to compete for EB-5 investments.

For these reasons, my good friend and colleague from Chicago, Mr. Gutierrez, and I introduced the EB-JOBS Act. Our EB-5 reform bill requires disclosures by regional centers and authorizes sanctions ranging from fines to debarment and termination of regional center designation for misrepresentations or other program violations. It provides for site visits, it prohibits regional center participation for persons who were found liable within the past 5 years of a criminal or civil violation relating to fraud.

I'm pleased to say that these and other transparency and integrity measures are included not just in our bill, but in bipartisan reform efforts, and they are widely agreed upon among EB-5 financiers and developers. They should be enacted before the program is reauthorized at the end of this fiscal year. We should also raise the minimum investment levels, which have not been changed in over 25 years, since the program was first enacted. And here again we have agreement across party lines.

Now, I know that reform of targeted employment area rules has been a major point of contention. But with balance and compromise we should be able to reach an agreement that works for urban and rural areas, for affluent and distressed communities, and that recognizes that workers do commute to job sites. There is no reason we shouldn't be able to reach an agreement that is consistent with the program's original intent and works in concert with other programs that direct investments to distressed areas, including enter-

prise zones, a Republican idea advocated by Speaker Ryan's mentor, the late Jack Kemp, the New Markets Tax Credits.

However, as I said at the outset of my remarks, far more important than an investment visa is a new startup visa for entrepreneurs. Our bill, the EB-JOBS Act, includes provisions that incentivize economic growth and job creation by creating new green card categories for entrepreneurs who establish startup businesses and create jobs for American workers.

Foreign-born entrepreneurs, many of them educated at U.S. universities, have contributed immensely to our economy. They have been a driving force for innovation in Silicon Valley and the continued prominence of America's technology sector. Nearly half, 24 out of 50 of the country's top venture-funded companies, have at least one immigrant founder.

In fact, immigrants are twice as likely to start businesses as native-born Americans, and immigrant businesses, including small nontech businesses, have grown at 2.5 times the national average. Companies back home like Intel, Google, Yahoo, and eBay were all founded by immigrants and now employ tens of thousands of people.

The startup visa would require significant venture capital or seed financing for innovative ideas and products or the creation of new businesses that can already demonstrate job creation in the U.S. Immigration has historically made our economy stronger. The inclusion of a startup visa expansion in our bill embraces that history and encourages the world's thinkers and doers to join us.

While this hearing is focused on the EB-5 program, I remain committed and will work tirelessly to pass startup visa legislation.

Today, more than ever, immigration is being used to divide us, and much needs to be done to fix our broken immigration system. But I am pleased that we can recognize programs that work. And I look forward to working with Chairman Goodlatte, Ranking Member Conyers, and others on a bipartisan, bicameral effort to make important reforms that will allow the EB-5 program to be reauthorized.

I thank you, Mr. Chairman, and yield back the balance of my time.

Mr. GOODLATTE. Thank you very much, Ms. Lofgren.

Without objection, all other Members' opening statements will be made a part of the record.

[The prepared statement of Mr. Nadler follows:]

Prepared Statement of the Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Member, Committee on the Judiciary

Mr. Chairman, the EB-5 program has been a tremendous job creator and economic development tool throughout the country. According to one estimate, EB-5 investments in New York State alone have created and supported more than 57,000 jobs in the last five years. Many of these are good, union jobs.

EB-5 funding has been essential to financing important public-private projects in my district, like the Pier A and Battery Maritime Redevelopment projects that are helping reclaim great public spaces for new and beneficial uses. It has also been a critical tool in financing major construction projects that provide thousands of jobs throughout New York City.

Right now, the largest construction project in the United States is in my district. It's called Hudson Yards, and EB-5 funding is an important part of its funding. This

project alone will generate 23,000 construction jobs and help improve local infrastructure.

Unfortunately, there is a misperception that the EB-5 program only benefits New York City and other urban areas. But EB-5 investment supports jobs up and down the East Coast, across the Midwest, and on the West Coast. Some critics of this program fail to recognize the ripple effect that major development projects can have throughout the country.

When a developer in New York City breaks ground on a new project, they place orders for construction parts—glass, steel, concrete—that come from suppliers all across the country. For example, the 'upstream' and 'downstream' effects of Hudson Yards alone have even found their way to Lynchburg, Virginia, in the Chairman's district, where Hudson Yards has placed an order for 24,000 tons, or approximately $100 million worth, of steel from the Banker Steel Company.

Certain critics of the EB-5 program like to say that some regional centers are, in effect, gerrymandering census tracts to create Targeted Employment Areas and take advantage of the lower investment criteria. But this criticism fundamentally misunderstands the economy and scale of a major urban center like New York. Unlike some parts of the country, where a census tract may stretch for many miles, in New York, it might be only a couple of blocks. It would be a mistake to constrict TEAs in such a way that ignores this reality.

Furthermore, in a major urban area, it is rare for workers to live in the same neighborhood as their job. But that doesn't mean that their home neighborhood is not directly relevant to the economic development an EB-5-financed project may generate. When the workers return home, often to a distressed community, they spend their income there, bringing further economic development to that neighborhood. That is exactly what this program was intended to do.

It is unfortunate that much of the debate surrounding the EB-5 program has been characterized as a battle between urban vs. rural, or New York against the rest of the country. I believe we can reform the program in such a way that everyone can compete on a level playing field, regardless of geography. I also support a range of integrity measures that would prevent fraud, and better data collection to ensure an accurate measure of the quality and economic impact of the jobs that are created. I hope Chairman Goodlatte and Ranking Member Conyers will continue to work with all of the relevant stakeholders to see that this is accomplished.

Mr. GOODLATTE. We welcome our distinguished witnesses today. And if you'd all please rise, I'll begin by swearing you in.

Do you and each of you swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you.

Let the record reflect that all of the witnesses have responded in the affirmative. And I'll now begin by introducing them.

The first witness is Mr. Nicholas Colucci. Mr. Colucci is the Chief of Immigrant Investor Program at the U.S. Citizenship and Immigration Services, a position he assumed in December of 2013. In this role, Mr. Colucci leads IPO's staff of adjudicators, economists, and program support specialists in administering the EB-5 program.

Mr. Colucci joined USCIS with more than 21 years of experience with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Department of the Treasury. Mr. Colucci received his BA magna cum laude from Long Island University and his MBA from Loyola University.

Today marks the second time that Mr. Colucci has testified before Congress, after last week's testimony before the Senate Judiciary Committee. I want to personally thank Mr. Colucci and his team and Legislative Affairs Liaison Mike Rodriguez for all the technical assistance they gave Mr. Issa, Mr. Conyers, Ms. Lofgren,

and me last year in formulating legislative reforms to the EB-5 program.

Our next witness is Ms. Rebecca Gambler, the Director of the U.S. Government Accountability Office's Homeland Security and Justice Team. Ms. Gambler leads GAO's work on border security, immigration, Department of Homeland Security management, and elections issues.

Prior to joining GAO, Ms. Gambler worked at the National Endowment for Democracy's International Forum for Democratic Studies. Ms. Gambler is a graduate of the U.S. Naval War College and holds master's degrees from Syracuse University and the University of Toronto.

Our next witness, Ms. Jeanne Calderon, is a clinical associate professor at the New York University Stern School of Business where she teaches courses in the areas of law, ethics, professional responsibility, and real estate. She's a graduate of Cornell University and the Georgetown University Law Center.

Sitting behind her is her husband, Mr. Gary Friedland, who is a scholar in residence at the NYU Stern School of Business and affiliated with Stern Center for Real Estate Finance Research. Since 2014, Ms. Calderon and Mr. Friedland have been analyzing the EB-5 immigrant visa program and how it is utilized as a source of capital for commercial real estate projects.

Our final witness is the CEO of E3 Investment Group, Mr. Matt Gordon. E3 is a private equity group that has established E3 Cargo, a trucking company, all of whose equity financing comes from the EB-5 program. Mr. Gordon has written extensively on legal topics related to EB-5 organizational structure and EB-5 policy.

Mr. Gordon is a licensed attorney in New York and began his career practicing mergers and acquisitions law on Wall Street. Mr. Gordon received his BS in public policy analysis from Cornell University and his JD cum laude from the University of Pennsylvania School of Law

Welcome to all of you. Your written testimony will be entered into the record in its entirety. I ask that you summarize your oral testimony in 5 minutes or less. To help you stay within that time, there's a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, that's it, your time is up, it signals that your 5 minutes have expired.

Mr. Colucci you may begin. Welcome.

TESTIMONY OF NICHOLAS COLUCCI, CHIEF, OFFICE OF IMMIGRANT INVESTOR PROGRAM, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Mr. COLUCCI. Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee, I'm pleased to speak with you today about the EB-5 Immigrant Investor Program. My name is Nicholas Colucci, and since December 2013, I've been chief of USCIS' Immigrant Investor Program Office, or IPO, which administers the EB-5 program. I came to USCIS with more than 20 years of regulatory and law enforcement experience with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Finan-

cial Crimes Enforcement Network, where I managed diverse teams dedicated to combating money laundering, fraud, and terrorist financing.

I share the Committee's dedication to ensuring the integrity of the EB-5 program. I will tell you today about the steps we've already taken and those we are planning to further strengthen our administration of the program. I thank the Committee for your continued support and interest in the EB-5 program.

USCIS has built a strong foundation that supports its administration of the program. Most significantly, in 2013 USCIS realigned the EB-5 program into IPO, or the Immigrant Investor Program Office, and relocated it to Washington, D.C., where we hired staff with expertise in economics, law, business, finance, securities, and banking to manage the complex EB-5 caseload.

USCIS also created a Fraud Detection and National Security Division and embedded its personnel to work alongside IPO's adjudications officers and economists. In addition to enhancing USCIS' ability to better detect fraud risks, which was noted by the Government Accountability Office in its August 2015 report, this structure has improved our ability to work closely with partners across the Federal Government to quickly identify and respond to fraud and national security concerns and to develop strategies to mitigate these risks.

Additionally, consistent with GAO's recent review of the EB-5 program, USCIS is working to refine data systems to better collect program information and has entered into an interagency agreement with the Department of Commerce to conduct a valuation study of the EB-5 program.

Since establishing IPO, USCIS has undertaken several initiatives to strengthen the program, including more than doubling the embedded Fraud Detection and National Security staff in fiscal year 2015 and more than tripling the number of overseas verification requests in support of EB-5 adjudications, providing ongoing antifraud training to increased IPO staff's awareness of potential fraud schemes, undertaking a thorough review of existing regional centers and terminating those that failed to submit required information or promote economic growth, expanding security checks to cover regional center businesses and certain executives, and publishing an updated classified intelligence assessment of the EB-5 program in fiscal year 2015.

We have accomplished much to strengthen the integrity of the EB-5 program, but as Secretary Johnson noted in his May 2015 letter to the Committee, there remains more to be done. USCIS plans to propose potential regulatory action, including changes to make targeted employment area designations more consistent, increase minimum investment amounts that have remained unchanged for 25 years, and require business plan filings in advance of investor petitions.

Additionally, USCIS has worked closely with congressional staff to identify key legislative enhancements to strengthen the program, including providing USCIS with specific statutory authority to ensure the Regional Center Program is free of bad actors, to impose graduated sanctions where appropriate, and to collect the information we need to better oversee the program.

If implemented, these common sense reforms would create immeasurable benefits for the program. With the continued support of this Committee, I'm confident that the EB-5 program can fully realize its goal of stimulating the U.S. economy through job creation and capital investment, while safeguarding national security and program integrity.

We look forward to continuing to work with this Committee to further then strengthen the EB-5 program and to provide technical assistance if requested to any EB-5-related legislation.

Once again, I appreciate the opportunity to be here today. I'm happy to answer your questions. Thank you.

[The prepared statement of Mr. Colucci follows:]

U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

NICHOLAS COLUCCI
CHIEF
OFFICE OF IMMIGRANT INVESTOR PROGRAM
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

"Is the Investor Visa Program an Underperforming Asset?"

BEFORE
THE HOUSE COMMITTEE ON THE JUDICIARY

FEBRUARY 11, 2016
2:00pm
2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

INTRODUCTION

Chairman Goodlatte, Ranking Member Conyers and distinguished Members of the Committee, I am pleased to be here today to speak with you about the EB-5 Immigrant Investor Program, which is the fifth preference employment-based immigrant program, also known as the "EB-5 program" and to discuss issues important to this Committee. My name is Nicholas Colucci and I am the Chief of the Immigrant Investor Program Office for U.S. Citizenship and Immigration Services (USCIS). The Immigrant Investor Program Office (IPO) is responsible for the management and oversight of the EB-5 program. I have served in this position since December 2013. I came to USCIS with more than 21 years of regulatory and law enforcement experience with the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Department of the Treasury Financial Crimes Enforcement Network (FinCEN), where I managed diverse teams dedicated to combatting money laundering, fraud, and terrorism financing. I share the Committee's focus on reducing the risk for fraud, preserving our national security, increasing the transparency and consistency of EB-5 visa adjudications, and further strengthening the operations and integrity of the EB-5 program. USCIS has supported these goals as we worked closely with staff from both the Senate and House Judiciary Committees from February through December 2015, providing technical drafting assistance and comments to the language of the EB-5 reform legislation that was drafted by Chairman Goodlatte and Ranking Member Conyers. As you know, the EB-5 reform language was not included in the Omnibus this past December, but instead, Congress extended the EB-5 regional center program without any changes until September 30, 2016. I want to thank the Chairman and the Committee for your support and continued interest in strengthening the EB-5 program.

OVERVIEW OF THE PROGRAM

Congress created the EB-5 visa program in 1990 as a tool to stimulate the U.S. economy by encouraging foreign capital investments and job creation. The EB-5 program makes immigrant visas and subsequent "green cards" available to foreign nationals who invest at least $1,000,000in a new commercial enterprise (NCE) that will create or preserve at least ten full-time jobs in the United States. A foreign national may invest $500,000 if the investment is in a targeted employment area (TEA), defined to include certain rural areas and areas of high unemployment.

The regional center program, first enacted in 1992, provides an allocation of EB-5 visas to be set aside for investors in regional centers designated by USCIS. A regional center is an economic entity, public or private, which promotes economic growth, regional productivity, job creation, and increased domestic capital investment. A primary benefit of the regional center program for immigrant investors is the ability to count jobs created indirectly toward statutory job creation requirements based on economic projections, relying on reasonable methodologies, rather than only counting jobs directly created by the NCE.

There are currently 796 regional centers. This is up from about 588 at the end of fiscal year (FY) 2014, and 11 at the end of 2007. I'll talk more about our efforts to regulate this quickly growing segment of the EB-5 community in a few moments.

Applicants for regional center designation must establish that the regional center will be involved in the promotion of economic growth and must identify a limited geographic area over which the regional center will have jurisdiction. Approved regional centers file a supplement annually to demonstrate continued eligibility for the designation.

All immigrant investors must file individual petitions supported by evidence that their investment capital was fully invested or is actively in the process of being invested, which requires the capital to have been placed at risk, and also that the invested capital was acquired through lawful sources.

If approved, the immigrant investor may ultimately be admitted to the United States as a conditional permanent resident. Approximately two years after admission as a conditional permanent resident, the immigrant investor is required to petition USCIS for the removal of conditions, at which time the investor must show that he or she invested or was actively in the process of investing the requisite capital, that he or she sustained those actions for the period of residence in the United States, and that job creation requirements were met or will be met within a reasonable time. If approved, the conditions on the investor's permanent residence are removed.

CURRENT STATE OF THE PROGRAM

Over the past few years, USCIS has taken a number of steps to improve the administration of the EB-5 program. In 2013, USCIS realigned the EB-5 program into the Immigrant Investor Program Office, and relocated it from USCIS' California Service Center, which adjudicates various immigration benefits, to Washington, D.C., with a Chief dedicated exclusively to EB-5 adjudications. As the United States Government Accountability Office (GAO) noted in its August 2015 report to Congressional requesters on the EB-5 program, this move was part of a restructuring to help USCIS better detect fraud. USCIS also created a Fraud Detection and National Security EB-5 Division (FDNS EB-5) and embedded its personnel within IPO to work alongside adjudications officers. Additionally, a dedicated team of attorneys from the USCIS Office of Chief Counsel advise on program-related legal matters.

In May 2013, USCIS published a comprehensive EB-5 policy memorandum to guide EB-5 adjudications, improve consistency among cases, and provide foundational policy interpretation for guiding the administration of the program's eligibility requirements. The policy memorandum, which was finalized after two rounds of public comment, serves as guidance to USCIS officers adjudicating EB-5 cases and is available to the public for reference. The policy memorandum clarified USCIS policy in several areas, including the job creation and investment requirements of the program; the USCIS deference policy for the adjudication of Form I-526 and Form I-829 petitions;[1] and the effect of material changes on adjudications, in recognition of the fluidity of the business world.

[1] Form I-526, Petition for Immigrant Investor, is filed by all immigrant investors. Approval classifies the investor under section 203(b)(5) of the Immigration and Nationality Act so that he or she (and derivative beneficiaries) can apply for an immigrant visa or for adjustment of status to conditional permanent resident. If admitted as an immigrant or adjustment of status is approved, the immigrant investor generally must then file Form I-829, Petition

In staffing the IPO, USCIS has, and continues to invest in the specialties needed to manage the complex EB-5 caseload by hiring staff with expertise in economics, law, business, finance, securities and banking to review cases and to enhance consistency, timeliness, and integrity within the program. IPO is currently staffed with 110 employees,[2] up from 22 at the close of FY 2013. Staffing includes 60 adjudications officers, 28 economists and 22 additional staff responsible for the direct support and management of the program, in addition to teams of Fraud Detection and National Security (FDNS) professionals and counsel dedicated to the program. We are currently recruiting to fill vacancies to bring IPO to its FY 2016 authorized staffing level of 171 in an effort to reduce our backlog.

USCIS has taken its responsibility to administer the EB-5 program very earnestly, through its specialized staffing devoted solely to this program and its extensive efforts to regulate the quickly growing regional center program. However, no agency can do this alone. The EB-5 program necessitates collaboration with several other agencies, and the establishment of IPO in Washington, D.C. allows USCIS to work closely with partners such as the U.S. Securities and Exchange Commission (SEC), with whom IPO shares a robust collaborative relationship. USCIS also works closely with its sister agency, U.S. Immigration and Customs Enforcement (ICE), as well as with the Federal Bureau of Investigation (FBI) and the U.S. Department of State, in support of our oversight of the EB-5 program. In September 2014, IPO hosted an EB-5 Interagency Symposium with representatives from more than 20 federal agencies to encourage collaboration among the government partners that have a stake in the EB-5 program. More recently, IPO engaged with counterparts at SEC, ICE, and FBI in Los Angeles at an outreach engagement in August 2015.

STATISTICS

In FY 2013, USCIS approved a total of:
- 3,699 Form I-526 petitions (Immigrant Petition by Alien Entrepreneur)
- 844 Form I-829 petitions (Petition by Entrepreneur to Remove Conditions)
- 118 Form I-924 applications (Application for Regional Center Under the Immigrant Investor Program)

In FY 2014, USCIS approved a total of:
- 4,925 I-526 petitions
- 1,603 I-829 petitions
- 294 I-924 applications

In FY 2015, USCIS approved a total of:
- 8,756 I-526 petitions

by Entrepreneur to Remove Conditions, within 90 days of the two year anniversary of his or her admission or adjustment as a conditional permanent resident. Other EB-5-specific forms include Form I-924, Application For Regional Center Under the Immigrant Investor Pilot Program, which is used to apply for regional center designation, and Form I-924A, Supplement to Form I-924, which approved regional centers file annually to demonstrate continued eligibility for the designation.

[2] Current and authorized IPO staffing numbers do not include FDNS and Office of Chief Counsel employees embedded in and dedicated to the EB-5 program.

- 1,067 I-829 petitions
- 262 I-924 applications

Based on these numbers, it is estimated that at least $8.7 billion has been invested into the U.S. economy through the EB-5 program since October 1, 2012. In terms of job creation, based on the number of approvals of Form I-829 to remove conditions on permanent residence since October 1, 2012, it is estimated that an aggregate total of an estimated 35,140 jobs have been created for U.S. workers through foreign investment via the EB-5 program. While these are rough estimates, USCIS is working to refine data systems to better collect program performance data and has entered into an agreement with the Department of Commerce to conduct a valuation study of the EB-5 program which we expect to receive in the second quarter of FY2016.

ONGOING AND PLANNED INITIATIVES

Since establishing IPO to oversee the EB-5 program, USCIS has undertaken and planned several initiatives to strengthen the program. These initiatives include:

- More than doubling the number of embedded FDNS EB-5 staff in FY 2015 and more than tripling the number of overseas verification requests sent to post in support of combatting fraud in the adjudication of EB-5 applications and petitions. Additionally, USCIS provides ongoing anti-fraud related training to IPO staff to increase awareness and understanding of potential fraud schemes and scenarios, including those that may be unique to the EB-5 program.
- Expanding USCIS's random site visit program to include EB-5-related adjudications in FY2016.
- Removing regional centers from the EB-5 program that no longer meet the program requirements. USCIS undertook a robust review of existing regional centers and terminated those that failed to submit required information and/or promote economic growth. A list of terminations is posted on the USCIS website to improve program transparency and facilitate investor due diligence. USCIS terminated 10 regional centers in FY 2014 and 19 regional centers in FY 2015, which is more terminations than in the entire prior history of the program.
- As an outgrowth of the regional center review, creating a Regional Center Compliance Unit dedicated to enhancing regulatory compliance, decreasing fraud risks, and increasing the efficiency of administration actions.
- Expanding security checks to cover regional center businesses and certain executives participating in the EB-5 program, thereby strengthening the vetting process. Security check enhancements now include the ability to query financial intelligence, such as the Bank Secrecy Act data collected and possessed by the Department of Treasury's Financial Crimes Enforcement Network (FinCEN).
- Drafting potential regulatory changes to clarify eligibility requirements and provide additional tools, to the extent allowed by statute, to strengthen the integrity of the program. Although these regulatory changes were eventually set aside in anticipation of reform legislation, USCIS is renewing its efforts to publish a new EB-5 regulation, as I will discuss shortly.

- Publishing an updated, classified Intelligence Assessment of the EB-5 program in 2015 that was cleared throughout the intelligence community and was the product of close collaboration between FDNS EB-5 and the DHS Office of Intelligence and Analysis.
- Implementing protocols approved in April 2015 by the Secretary of Homeland Security related to the ethical administration of the EB-5 program. USCIS provided training on these protocols to all DHS and USCIS employees and contractors involved in policymaking, evaluation, or review of the EB-5 program or the adjudication of any EB-5 related petitions or applications. The protocol training slides are posted on the USCIS.gov website for additional transparency.
- Establishing a Customer Service and Stakeholder Engagement team dedicated to the EB-5 program in April 2014 to address inquiries and requests for assistance, enhance transparency and customer service, and manage IPO's stakeholder engagement plan. This team, which responded to more than 25,000 customer inquiries in FY 2015, complements outreach efforts through timely identifying and appropriately elevating issues requiring action or stakeholder engagement. USCIS holds EB-5 stakeholder engagements on at least a quarterly basis to identify and understand issues and develop solutions. These engagements averaged more than 600 participants per engagement in FY 2015.
- Establishing a new EB-5 Policy and Performance Division within IPO in FY 2016 to devote additional staff in support of the EB-5 program's increasingly complex policy and regulatory requirements.
- Also in FY 2016, USCIS is working to develop an audit program to increase its oversight of regional centers, and is planning to increase interviews with EB-5 petitioners at the I-829 petition stage.

NECESSARY ENHANCEMENTS

As Secretary Johnson noted in both his April 15, 2015 letter to Chairman Grassley and Ranking Member Leahy and his May 1, 2015 letter to Chairman Goodlatte and Ranking Member Conyers, the EB-5 program is not without its challenges. Although we have accomplished much to strengthen the integrity of this program, there is still more to do, much of which requires Congress' help.

USCIS has worked closely with Congressional staff to identify key enhancements that would strengthen the integrity of the program and reduce the challenges that USCIS faces in administering the EB-5 program.

Potential regulatory action to strengthen the program that USCIS plans to propose includes changes to improve the integrity of targeted employment areas; increase minimum investment amounts that have remained unchanged for 25 years; and require business plan filings in advance of investor filings to improve program efficiencies and reduce the potential for investor fraud.

In other areas, legislative reform would greatly benefit the integrity of the EB-5 program include:

Authorizing USCIS to Act Quickly on Criminal and Security Concerns: USCIS lacks explicit statutory authority to terminate a regional center for criminal or security

concerns. Under current regulations, USCIS may terminate a regional center's designation if the regional center is no longer promoting economic growth or fails to submit required information to USCIS (on an annual basis, on a cumulative basis, and/or as otherwise requested) on Form I-924A. Criminal activity or national security concerns are not provided as a basis to terminate a regional center. Currently, in instances where USCIS has criminal or security concerns about a regional center, USCIS has to either demonstrate these concerns are related to the regional center's failure to promote economic growth or demonstrate the regional center's failure to promote economic growth separately from any criminal or security concerns, which is an unnecessarily lengthy and circuitous route to terminate a regional center.

Protecting Investors by Regulating Regional Center Principals and Associated Commercial Enterprises: USCIS should be specifically authorized to prohibit persons from participating in regional centers and associated commercial enterprises based upon certain criminal violations and fraud or securities-related civil violations. In addition, all regional center principals should be required to be U.S. citizens or lawful permanent residents. Currently, USCIS is able to vet regional center principals; however, USCIS does not have the authority to exclude individuals from operating as regional center principals solely on the basis of their past criminal history, though this factor could come into play in assessing whether a regional center should be designated or terminated.

Enhancing Reporting and Auditing: USCIS should be authorized to enhance the regional center annual reporting process, including requiring, as appropriate, certification of the regional center's continued compliance with U.S. securities laws; disclosure of any pending litigation; details of how investor funds were utilized in a project; an accounting of jobs created; and the progress toward completion of the investment project.

Providing Sanction Authority: USCIS needs sanction authority to act proportionately where warranted, and should be authorized to sanction regional centers with fines or temporary suspensions where appropriate.

CONCLUSION

If implemented, I believe these common sense reforms would create immeasurable benefits for the EB-5 program. With the continued support of this Committee, I am confident that we can overcome the challenges that face the EB-5 program and ensure that it fully realizes its goal of stimulating the U.S. economy through job creation and capital investment by foreign investors, while safeguarding national security and the integrity of this valuable immigration program.

We at USCIS look forward to continuing to assist Congress, working closely with staff from both the Senate and the House to provide technical assistance and comments to the language of any EB-5 reform legislation.

Once again, I appreciate the opportunity to be here today. I am happy to answer any questions you may have. Thank you.

Mr. GOODLATTE. Thank you Mr. Colucci.
Ms. Gambler, welcome.

TESTIMONY OF REBECCA GAMBLER, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. GAMBLER. Good afternoon, Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee. I appreciate the opportunity to testify at today's hearing to discuss GAO's work reviewing the Immigrant Investor, or EB-5, Program.

The EB-5 program was established to promote job creation and encourage capital investment in the U.S. by foreign investors in exchange for lawful permanent residency and a path to citizenship. Under the program, immigrant investors are to invest $1 million in a commercial enterprise or $500,000 if the business is in a targeted employment area. The investment is to result in the creation of at least 10 full-time jobs.

Immigrant investors and their eligible dependents receive 2-year conditional green cards. If they meet requirements, including their investments resulting in at least 10 full-time jobs, they can apply to remove the conditional basis of their green cards. About 10,000 EB-5 visas are made available to qualified applicants each fiscal year, and the number of EB-5 visas issued each year has grown substantially over time.

My remarks today will address two key aspect of USCIS' oversight and management of the EB-5 program. One, the extent to which USCIS has assessed and addressed fraud risks. And two, USCIS' methods for verifying job creation and reporting economic benefits.

First, USCIS has taken some action to assess and address fraud risks to the program. For example, in recent years USCIS and partner agencies have conducted various assessments of fraud risks. USCIS has also increased its fraud unit staffing and has conducted fraud awareness training.

While these and other actions have been positive steps, USCIS faces challenges in its efforts to identify and mitigate fraud risks. For example, USCIS officials have noted the constantly evolving nature of fraud risks and USCIS is working to implement our recommendation to plan and conduct regular fraud risk assessments.

Further, USCIS' information systems and processes make it difficult for the agency to effectively collect and use data on the EB-5 program to identify potential fraud. USCIS has also not regularly interviewed immigrant investors when they submit applications to remove the conditions on their permanent residency.

To strengthen USCIS' fraud detection and mitigation capabilities, we recommended that USCIS develop a strategy to expand information collected from applicants and petitioners. USCIS concurred with our recommendation and is taking steps to address it, such as planning to begin interviews later this year.

Second, with regard to verifying job creation and reporting economic benefits, USCIS has increased its capacity in these areas. For example, USCIS has increased the size and expertise of its workforce and improved its training on the adjudication process. However, our work indicates that USCIS does not have a valid and

reliable methodology for reporting on the program's economic benefits.

Specifically, USCIS' methodology may understate or overstate program benefits in certain instances. This is because USCIS' methodology is based on the minimum program requirements of 10 jobs and a $500,000 investment per investor, rather than data collected by USCIS about the number of jobs created and amounts invested.

We recommended that USCIS track and report such data. This is data that immigrant investors report and the agency verifies on program forms. DHS concurred and plans to revise its systems and processes to implement this recommendation.

In addition, USCIS' methodology allows immigrant investors to claim all jobs created by projects with both EB-5 and non-EB-5 investors. We and others have previously raised questions about this practice as it makes it difficult to determine whether the funds invested by EB-5 investors actually created U.S. jobs. In some cases, without the practice of allowing immigrant investors to claim jobs created by investments from other sources, a higher investment amount would be required for investors to meet the job-creation requirements.

In closing, while the EB-5 program seeks to stimulate the economy by promoting job creation and encouraging capital investment by foreign investors, it also has unique fraud risks that must be identified and addressed. USCIS' ability to apply a valid and reliable methodology for reporting EB-5 program outcomes and economic benefits is also important for program accountability and to provide the public and Congress with more complete information to evaluate the program and make reauthorization decisions.

Again, thank you for the opportunity to testify. And I'm happy to take any questions that Members may have.

[The prepared statement of Ms. Gambler follows:]

United States Government Accountability Office

GAO

Testimony Before the Committee on the Judiciary, House of Representatives

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IMMIGRANT INVESTOR PROGRAM

Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits

Statement of Rebecca Gambler, Director
Homeland Security and Justice

GAO Highlights

Highlights of GAO-16-431T, a testimony before the Committee on the Judiciary, House of Representatives

February 11, 2016

IMMIGRANT INVESTOR PROGRAM

Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits

Why GAO Did This Study

Congress created the EB-5 visa category to promote job creation by immigrant investors in exchange for visas providing lawful permanent residency. Participants are required to invest $1 million in a business that is to create at least 10 jobs—or $500,000 for businesses located in an area that is rural or has experienced unemployment of at least 150 percent of the national average rate. Upon meeting program requirements, immigrant investors are eligible for conditional status to live and work in the United States and can apply to remove the conditions for lawful permanent residency after 2 years.

This statement discusses USCIS efforts under the EB-5 Program to (1) work with interagency partners to assess fraud and other related risks and address identified fraud risks, and (2) increase its capacity to verify job creation and use a valid and reliable methodology to report economic benefits. This statement is based on a report GAO issued in August 2015 (GAO-15-696), with selected updates conducted in February 2016 to obtain information from DHS on actions it has taken to address the report's recommendations.

What GAO Recommends

In its August 2015 report, GAO recommended that USCIS, among other things, conduct regular future risk assessments, develop a strategy to expand information collection, and analyze data collected on program forms to reliably report on economic benefits. DHS concurred with the recommendations and reported actions underway to address them.

View GAO-16-431T. For more information, contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov.

What GAO Found

In August 2015, GAO reported that the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), which administers the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program), had collaborated with its interagency partners to assess fraud and national security risks in the program in fiscal years 2012 and 2015. These assessments were onetime efforts; however, USCIS officials noted that fraud risks in the EB-5 Program are constantly evolving, and they continually identify new fraud schemes. USCIS did not have documented plans to conduct regular future risk assessments which could help inform efforts to identify and address evolving program risks. GAO recommended that USCIS plan and conduct regular future fraud risks assessments. DHS agreed, and as of February 2016, USCIS officials stated that they planned to complete an additional risk assessment by September 2016 and a minimum of one annually thereafter. GAO also reported in August 2015 that USCIS had taken steps to address the fraud risks it identified by enhancing its fraud risk management efforts; however, USCIS's information systems and processes limited its ability to collect and use data on EB-5 Program participants to address fraud risks in the program. For example, USCIS did not consistently enter some information it collected on participants in its information systems, such as name and date of birth, and this presented barriers to conducting basic electronic searches that could be analyzed for potential fraud. USCIS planned to collect and maintain more complete data in its new information system; however, the information system improvements with the potential to expand USCIS's fraud mitigation efforts were not to take effect until 2017 at the earliest. Given this time frame and gaps in USCIS's other information collection efforts, GAO recommended that USCIS develop a strategy to expand information collection in order to better position the agency to identify and mitigate potential fraud. DHS concurred, and in February 2016 USCIS officials stated that USCIS plans to develop such a strategy by the end of fiscal year 2016.

In August 2015, GAO reported that USCIS had increased its capacity to verify job creation by increasing the size and expertise of its workforce, among other actions. However, USCIS's methodology for reporting program outcomes and overall economic benefits was not valid and reliable because it may understate or overstate program benefits in certain instances as it is based on the minimum program requirements of 10 jobs and a $500,000 investment per investor instead of the number of jobs and investment amounts collected by USCIS on individual EB-5 Program forms. For example, total investment amounts are not adjusted downward to account for investors who do not complete the program or upward for investments of $1 million instead of $500,000. USCIS officials said they are not statutorily required to develop a more comprehensive assessment. However, tracking and analyzing data on jobs and investments reported on program forms would better position USCIS to more reliably assess and report on the EB-5 Program economic benefits. Accordingly, GAO recommended that USCIS track and report data that investors report and the agency verifies on its program forms for total investments and jobs created through the EB-5 Program. DHS agreed and plans to implement this recommendation by the end of fiscal year 2017.

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

I am pleased to be here today to discuss actions taken by the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) to assess fraud risks and economic benefits associated with the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program). Congress created the EB-5 immigrant visa category as part of the Immigration Act of 1990 to promote job creation and encourage capital investment in the United States by foreign investors in exchange for lawful permanent residency (green card) and a path to citizenship.[1] Upon meeting certain EB-5 Program requirements—including investing $1 million (or $500,000 in targeted employment areas) in a new commercial enterprise that will result in the creation of at least 10 full-time jobs—immigrant investors and their eligible dependents receive 2-year conditional green cards to live and work in the United States.[2] If investors

[1]Pub. L. No. 101-649, tit. I, subtit. B, pt. 2, § 121, 104 Stat. 4978, 4989-94 (codified as amended at 8 U.S.C. §§ 1153(b)(5), 1186b). The accompanying report of the Senate Judiciary Committee states that the EB-5 visa category "is intended to create new employment for U.S. workers and to infuse new capital into the country." See S. Rep. No. 101-55, at 21 (1989).

[2]See 8 U.S.C. §§ 1153(b)(5)(A) (general EB-5 requirements), (C) (amount of capital required), (D) (full-time employment defined), 1186b(a)(1) (alien entrepreneur receives conditional lawful permanent resident status); 8 C.F.R. § 204.6(e) (definitions), (f) (required amounts of capital), (h) (establishment of a new commercial enterprise), (j)(4)(ii) (to show that the new commercial enterprise established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the preinvestment level for a period of at least 2 years). Immigrant investors and their eligible dependents are admitted to the United States under EB-5 visas, or if already in the United States, their statuses are adjusted. See 8 U.S.C. §§ 1153(b)(5), 1201, 1255(a). Eligible dependents (or derivative family members) are the immigrant investor's spouse and unmarried children under the age of 21. A targeted employment area is an area that, at the time of the investment, is either a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. See 8 U.S.C. § 1153(b)(5)(B)(ii); 8 C.F.R. § 204.6(e).

meet program requirements within the 2 years, they can apply to remove the conditional basis of their green card.[3]

Approximately 10,000 EB-5 visas per fiscal year are made available to qualified immigrant investors of the EB-5 Program.[4] Under the EB-5 Regional Center Program, which was first enacted as a pilot in 1992 and reauthorized numerous times since, a certain number of the EB-5 visas are set aside annually for immigrant investors in economic units called regional centers, which are established to promote economic growth.[5] Most recently, the Regional Center Program was extended until September 30, 2016.[6] Under this program, immigrant investors can pool their investment with those of other foreign and U.S. investors to fund a new commercial enterprise within a regional center. These regional center investors may meet the statutory employment creation requirement by using reasonable methodologies to show that 10 full-time positions

[3]See 8 U.S.C. § 1186b(c)(1), (d)(2). Where an alien entrepreneur's petition for removal of lawful permanent resident conditions is denied, USCIS will terminate the status of the alien and his or her spouse and any children, and initiate removal proceedings. See 8 C.F.R. § 216.6(d)(2). If an alien entrepreneur fails to file for removal of conditions within the 90-day period prior to the second anniversary of the date on which he or she obtained conditional status, such status will automatically terminate and removal proceedings will be initiated. See 8 C.F.R. § 216.6(a)(5).

[4]See 8 U.S.C. §§ 1151(d) (worldwide level for employment-based immigrants), 1153(b)(5)(A) (no more than 7.1 percent of employment-based visas are to be made available to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise).

[5]See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, tit. VI, § 610, 106 Stat. 1828, 1874 (1992) (codified as amended as a note under 8 U.S.C. § 1153). Under 8 C.F.R. § 204.6(e), a regional center is defined as any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. See 8 C.F.R. § 204.6(m)(3), (6).

[6]See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. F, tit. V, § 575, 129 Stat. 2242 (2015).

were created either directly or indirectly.[7] In fiscal year 2014, the maximum number of visas available were allocated for the EB-5 Program—approximately 10,000 annually, with about 95 percent of the investments in regional center projects.

Several federal and state agencies are involved to varying degrees in ensuring the integrity of the EB-5 Program. The Immigrant Investor Program Office (IPO), within USCIS, administers the EB-5 Program—adjudicating applications while striving to ensure that program participants, including foreign investors and principals operating U.S. regional centers, comply with requirements of the program. Application materials adjudicated by IPO staff include the Form I-526: Immigration Petition by Alien Entrepreneur; the Form I-485: Application to Register Permanent Residence or Adjust Status; the Form I-829: Petition by Entrepreneur to Remove Conditions; and the Form I-924: Application for Regional Center. USCIS also has a Fraud Detection and National Security (FDNS) unit charged with preventing, detecting, and responding to allegations of fraud in the program. States contribute to the EB-5 process—in relation to investors seeking a reduced investment of $500,000 in a targeted employment area—by certifying through the state government's authorized body that the geographic or political subdivision in which the enterprise is, or will be, principally doing business, has been designated a high unemployment area.[8] After USCIS approves initial petitions for overseas investors to participate in the program, the Department of State (State) adjudicates the immigrant visa applications conducting background checks and other activities to help ensure investors and their families comply with national security and other

[7]See Pub. L. No. 102-395, tit. VI, § 610(c), 106 Stat. at 1874 (8 U.S.C. § 1153 note). Under USCIS policy, indirect jobs are those held outside of the new commercial enterprise but created as a result of the investment made by an immigrant investor in such commercial enterprise, which then makes the capital available to a separate job-creating entity. In other words, indirect jobs are any jobs created by the investment but not occupied by individuals having an employee-employer relationship with the new commercial enterprise. Regional center investors are permitted to claim credit for both direct and indirect jobs estimated to have been created through revenues generated from increased exports resulting from the new commercial enterprise, as demonstrated using reasonable methodologies such as multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices that indicate the likelihood that the business will result in increased employment. See 8 U.S.C. § 1153 note; 8 C.F.R. § 204.6(j)(4)(iii), (m)(3), (7).

[8]See 8 C.F.R. § 204.6(i), (j)(6)(ii)(B).

requirements for admission to the United States.[9] FDNS refers cases of fraud related to foreign investors to DHS's U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), for investigation. The U.S. Securities and Exchange Commission (SEC) investigates fraud allegations of marketing or manipulation of securities offerings related to EB-5 projects by U.S. principals operating regional centers, or others. The Department of Justice's (DOJ) Federal Bureau of Investigation (FBI), as the lead federal agency for combating terrorism, investigates any activity by investors or regional centers that may pose a risk to national security as well as other criminal activities.

My statement today is based on our August 2015 report on USCIS efforts under the EB-5 Program and updated information on the status of DHS efforts to address the report's recommendations.[10] Like that report, my statement discusses the extent to which USCIS has (1) worked with interagency partners to assess fraud risks and other related risks and addressed identified fraud risks, and (2) increased its capacity to verify job creation and use valid and reliable methodologies to report program outcomes and economic benefits. For our report, we reviewed past GAO and DHS Office of Inspector General (DHS OIG) reports, as well as fraud risk assessments conducted by USCIS, State, the SEC, the FBI, and ICE HSI since the program's inception, to identify efforts taken to identify and address fraud as well as assess EB-5 Program outcomes and economic benefits. We also analyzed USCIS processes, procedures, and training for detecting, preventing, and investigating fraud and compared them against *Standards for Internal Control in the Federal Government*.[11] Additionally, we reviewed the methodology used by USCIS to report the total amount of investment and jobs created through the EB-5 Program; the statement of work for a contracted study on the program's economic impact; and economic models used by regional center investors and USCIS to forecast the number of jobs estimated to be created by the

[9] USCIS adjudicates Form I-485 for EB-5 immigrant investors who are already in the United States under other lawful immigration status, and who are seeking to adjust status to conditional permanent residency. Aliens who are deemed inadmissible under 8 U.S.C. § 1182 are generally ineligible to receive visas, ineligible to be admitted to the United States, and ineligible for adjustment of status. *See* 8 U.S.C. §§ 1182(a), 1201(h), 1255(a).

[10] GAO, *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*, GAO-15-696 (Washington, D.C.: Aug. 12, 2015).

[11] GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington D.C.: November 1999).

project when petitioning to participate in the program. Further, we interviewed USCIS, SEC, FBI, and ICE HSI headquarters and field officials to identify efforts taken to identify and address fraud in the program as well as assess and report program outcomes and economic benefits. For the updates, we reviewed documents and interviewed USCIS officials regarding the status of actions taken in response to the recommendations made in our 2015 report. Our August 2015 report provides further details on our scope and methodology. We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

USCIS Had Taken Some Steps to Assess and Address Fraud Risks, but Regular Risk Assessments and Additional Controls Could Improve Fraud Prevention and Detection

USCIS and Others Had Identified Unique Fraud Risks to the EB-5 Program and Could Benefit from Planning and Conducting Regular Future Risk Assessments

In August 2015, we reported that USCIS had identified fraud and national security risks in the EB-5 Program in various assessments it conducted over time and in collaboration with its interagency partners. For example, in 2012, USCIS met with interagency partners and National Security Staff to assess fraud and national security risks in the EB-5 Program.[12] An internal memo discussing this effort also highlighted steps to enhance the program's ability to mitigate fraud such as through improved collaboration with the SEC and the FBI.[13] Further, later in 2012, USCIS worked with FBI and the Department of Treasury Financial Crimes Enforcement Network, among others, to assess the benefits of incorporating enhanced security screenings to improve its vetting of EB-5 Program petitioners, including the need to provide dedicated fraud personnel to the EB-5 Program, according to FDNS personnel. Most recently, in early 2015, DHS's Office of Intelligence and Analysis prepared a classified report, which updated the program's 2012 assessment of the fraud risks to the EB-5 Program. USCIS officials said that they also identify potential fraud risks in the EB-5 Program through their day-to-day oversight work, and that law enforcement agencies such as HSI, the SEC, and the FBI may also uncover fraud through their own investigative efforts and may share the information with USCIS, as appropriate.

Although the risk assessments conducted by USCIS and other agencies have helped provide information to USCIS to better understand and manage risks to the EB-5 Program, these assessments were onetime exercises, and, as we reported in August 2015, USCIS did not have documented plans to conduct regular future risk assessments of the program because, according to USCIS officials, the agency would perform them on an "as needed" basis. However, FDNS officials noted that fraud risks and schemes in the EB-5 Program were constantly evolving, and stated that the office regularly identifies new fraud schemes and that they must work to stay on top of emerging issues. We also reported that the EB-5 program has grown substantially over time—the total number of EB-5 visas issued increased from almost 3,000 in fiscal

[12]On February 10, 2014, the National Security Staff returned to being known as the National Security Council staff by executive order. See Exec. Order No. 13657, 79 Fed. Reg. 8823 (Feb. 10, 2014).

[13]The stakeholders included DHS components such as ICE, U.S. Customs and Border Protection, the Office of Intelligence and Analysis, and DHS Office of Policy; the Departments of Justice, the Treasury, State, and Commerce; the Office of the Director of National Intelligence; and SEC.

year 2011 to over 9,000 in fiscal year 2014, according to State data, which creates additional opportunities for fraud.

According to the risk assessments and FDNS officials, the EB-5 Program possesses several risks that are generally not present in other types of immigration programs. Specifically, a senior FDNS official noted that, as is the case with other immigration benefits, EB-5 adjudications center on the eligibility of the petitioner or applicant; however, the EB-5 Program also has an investment component that creates increased program complexity and the potential for fraud risks.[14] Fraud risks which USCIS and other agencies have identified for the EB-5 Program included those related to both the investors and regional centers, such as the following.[15]

Uncertain source of immigrant investor funds. USCIS's 2012 risk assessment identified the source of EB-5 petitioner funds as an area at risk for fraud. As previously discussed, to be eligible for the EB-5 Program, immigrant investors must invest a minimum of $1 million—or $500,000 in a targeted employment area—in a job-creating enterprise, and investors must provide documentation showing that these funds come from a lawful source.[16] USCIS officials said that some petitioners may have strong incentives to report inaccurate information about the sources of their funds on their petitions or use fraudulent documents in instances when the funds come from illicit—and thus ineligible—sources, such as funds obtained through drug trade, human trafficking, or other criminal activities. USCIS and State officials noted that verifying a lawful source of funds was difficult as they did not have authority to access and verify banking information with many foreign countries, and USCIS

[14]EB-5 is not the only immigration program with an investment feature. The nonimmigrant treaty investor (E-2) visa category also has an investment component. See 8 U.S.C. § 1101(a)(15)(E); 8 C.F.R. § 214.2(e).

[15]Because of the sensitive nature of this information, we do not discuss national security concerns such as threats from terrorism or espionage in this report.

[16]See 8 C.F.R. § 204.6(e), (g)(1), (j); 8 C.F.R. § 216.6(c)(2). In the Senate Judiciary Committee report accompanying the Immigration Act of 1990, it is stated that "the committee intends that processing of an individual visa not continue under this section if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs)." S. Rep. No. 101-55, at 21. This committee report was cited as a basis for changing the definition of capital to exclude assets directly or indirectly acquired by unlawful means. See Employment-Based Immigrants, 56 Fed. Reg. 60,897, 60,902 (Nov. 29, 1991) (codified at 8 C.F.R. pts. 103, 204).

officials said that therefore IPO and FDNS did not have a means to verify self-reported immigrant financial information stated to come from these foreign banks.

Legitimacy of investment entity. The amount of investment required to participate in the EB-5 Program, coupled with the fact that investors are making an investment in order to obtain an immigration benefit (i.e., green card), can create fraud risks tied to regional center operators and intermediaries. For example, SEC officials noted that immigrant investors may be vulnerable to fraud schemes because they may be primarily focused on obtaining their visas. As of May 2015, FDNS documentation tracking investigations by program stakeholders such as the SEC and HSI showed that over half (35) of the 59 open investigations were primarily focused on securities fraud.[17] Moreover, in January 2016, the SEC's Office of Inspections and Examinations identified the EB-5 Program in its examination priorities for 2016.

Given these identified fraud risks, and the constantly evolving nature of risks to the program, we recommended in our August 2015 report that USCIS plan and conduct regular fraud risk assessments of the EB-5 Program to better position it to identify, address, and mitigate emerging fraud risks to the program. DHS concurred, stating that the EB-5 Branch of USCIS's FDNS would continue to conduct a minimum of one fraud, national security, or intelligence assessment on an aspect of the program annually. In February 2016, USCIS officials stated that they had completed the data collection for their first review, which they estimated completing by September 2016. This review will focus on all identified national security concern cases initiated in the Fraud Detection and National Security Detection System from fiscal years 2011 through 2015.[18] They also provided draft policy documents demonstrating their intention to require a minimum of one fraud assessment annually; however, these documents had not yet been finalized. To fully address

[17]The investigations include those performed by law enforcement agencies such as the SEC, the FBI, and ICE. The remaining investigations related to other criminal activities such as money laundering as well as national security concerns and immigration fraud.

[18]The Fraud Detection and National Security Data System is the case management system USCIS uses to record, track, and manage immigration inquiries, investigative referrals, law enforcement requests, and case determinations involving benefit fraud, criminal activity, public safety, and national security concerns.

the intent of our recommendation, USCIS needs to conduct at least one review, as planned, and document plans for future assessments.

USCIS Had Taken Some Steps to Address Fraud Risks, but Additional Controls Could Improve Fraud Prevention and Detection

In August 2015, we reported that USCIS had taken some steps to enhance its fraud risk management efforts. These included establishing a dedicated entity to design and oversee its fraud risk management activities, creating an organizational structure conducive to fraud risk management, conducting fraud-awareness training, and establishing collaborative relationships with external stakeholders, including law enforcement agencies. In November 2013, USCIS established a fraud specialist unit for the EB-5 Program within FDNS. As of May 2015, FDNS was in the process of hiring an additional 8 dedicated staff with specialized fraud expertise to enhance its EB-5 Program fraud detection capabilities and oversight, bringing the total FDNS EB-5 Program staff to 21. According to FDNS officials, as of January 2016, the FDNS EB-5 Division included 22 full-time equivalent staff, of which 18 positions were currently occupied. We further reported in August 2015 that in 2013 USCIS also colocated staff who screen and adjudicate EB-5 petitions within IPO and began having FDNS officers and intelligence professionals work alongside EB-5 Program adjudicators to facilitate fraud-related information sharing. FDNS established training opportunities to include specialized fraud training at the Federal Law Enforcement Training Center related to money laundering and an internal "EB-5 University" to provide staff with monthly presentations on specific fraud-related topics believed to be immediately relevant to EB-5 Program adjudication. According to SEC, ICE, FBI, and USCIS officials, USCIS also increased its level of coordination with law enforcement agencies to cross-train staff with additional expertise and increase communication and collaboration on investigations and enforcement actions that can be taken when potential fraud, criminal activity, or national security threats are detected in the EB-5 Program.

However, in our August 2015 report we also reported that USCIS faced significant challenges in its efforts to detect and mitigate fraud risks. Specifically, we found that USCIS's information systems and processes limit its ability to collect and use data on the EB-5 Program to identify fraud related to individual investors or investments or to determine any fraud risk trends across the program. USCIS relies heavily on paper-based documentation. While USCIS personnel are to enter certain information from these paper documents into various electronic databases, these databases have limitations that reduce their usefulness for conducting fraud-mitigating activities. For example, information that

could be useful in identifying program participants linked to potential fraud is not required to be entered into USCIS's database, such as the applicant's name, address, and date of birth on the Form I-924 used to apply for regional center participation in the EB-5 Program. USCIS officials stated that the agency will be able to collect and maintain more complete data on EB-5 Program petitioners and applicants through the deployment of electronic forms in its new system, the Electronic Immigration System (ELIS). However, USCIS has faced long-standing challenges in implementing ELIS, which, as we reported in May 2015, was nearly 4 years delayed and $1 billion over budget.[19]

As we reported in August 2015, USCIS has taken alternative steps to gather information to mitigate fraud risk while improvements to its information systems are delayed, such as expanding its site visits program to include random checks of the operation of EB-5 Program projects. However, opportunities remain to expand information collection through interviews with immigrant investors and expanded EB-5 Program petition and application forms. USCIS is statutorily required to conduct interviews of immigrant investors within 90 days after they submit the Form I-829 petition to remove conditions on their permanent residency.[20] However, USCIS also has the statutory authority to waive the requirement for such interviews.[21] As of April 2015, USCIS officials stated that USCIS IPO had not conducted an interview at the I-829 stage. We reported that conducting interviews at this stage to gather additional corroborating or contextual information could help establish whether an immigrant investor is a victim of or complicit in fraud—a concern shared by both ICE HSI and SEC officials, who noted that gathering additional information and context about individual investors could help to inform investigative work. USCIS officials said they anticipate conducting these interviews in the near future, but had not developed plans or a strategy for conducting interviews at this stage primarily because IPO was relatively new and began adjudicating I-829 petitions in September 2014.

[19] GAO, *Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program*, GAO-15-415 (Washington, D.C.: May 18, 2015).

[20] See 8 U.S.C. § 1186b(c)(1)(B) (Immigration and Nationality Act interview requirement), (d)(3) (period for conducting interview), 8 C.F.R. § 216.6(a)(3).

[21] See 8 U.S.C. § 1186b(d)(3) (discretionary waiver authority), 8 C.F.R. § 216.6(b)(1).

In August 2015, we also reported that USCIS does not collect certain applicant information that could help mitigate fraud. Specifically, USCIS does not require information on the Form I-924 about the businesses supported by the regional center and program investments coordinated by the regional center, such as the names of principals or key officers associated with the underlying businesses, or information on advisers to investors such as foreign brokers, marketers, attorneys, and other advisers receiving fees from investors. According to USCIS officials, at the time of our August 2015 report, USCIS was drafting revised Forms I-924 and I-924A that would seek to address many of these concerns.[22] However, as these revisions have not been completed, it is too early to tell the extent to which they will position USCIS to collect additional applicant information. Given that information system improvements with the potential to expand USCIS's fraud mitigation efforts will not take effect until 2017 at the earliest and that gaps exist in USCIS's other information collection efforts, we concluded that collecting additional information would better position USCIS to identify and mitigate potential fraud. We recommended that USCIS develop a strategy to expand information collection, including considering the increased use of interviews at the I-829 phase as well as requiring the additional reporting of information in applicant and petitioner forms. DHS concurred and, as of February 2016, officials reported that USCIS continues to take steps to develop and implement a strategy to expand information collection that includes revisions to the Form I-924, I-924A, I-526, and I-829 applications and petitions to capture more information. In addition, these officials stated that USCIS had not yet conducted an interview at the I-829 stage, but they were finalizing an interview process and planned to begin conducting interviews in the third quarter of fiscal year 2016.

[22]Once a regional center has been approved to participate in the program, a designated representative of the regional center must file a Form I-924A, Supplement to Form I-924 for each fiscal year, to provide USCIS with updated information demonstrating that the regional center continues to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area

USCIS Had Increased Capacity for Verifying Job Creation but Did Not Use a Valid and Reliable Methodology for Reporting Program Outcomes and Economic Benefits

USCIS Strengthened Its Workforce, Guidance, Training, and Process for Verifying Job Creation

We reported in August 2015 that USCIS had taken action to increase its capacity to verify job creation in response to past GAO and DHS OIG reports that found that USCIS did not have staff with the expertise to verify job creation estimates and that the agency's methodologies for verifying such estimates were not rigorous.[23] In particular, in December 2013, the DHS OIG reported that USCIS lacked meaningful economic expertise to conduct independent and thorough reviews of economic models used by investors to estimate indirect job creation for regional center projects, and recommended that USCIS coordinate with other federal agencies to provide expertise in the adjudication process.[24] USCIS took action over time to increase the size and expertise of its workforce, provide clarifying guidance and training, and revise its process for assigning applications for adjudication. For example, in fiscal year 2013, USCIS increased its staffing from 9 adjudicators to 58, including 22 economists, and issued a policy memorandum clarifying existing guidance to help ensure consistency in the adjudication of petitions and to provide greater transparency for the EB-5 Program stakeholder

[23]The Department of Homeland Security, Office of Inspector General, *United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program* OIG-14-19 (Washington, D.C.: Dec. 12, 2013); and GAO, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors,* GAO-05-256 (Washington, D.C.: Apr. 1, 2005).

[24]OIG-14-19.

community, according to IPO officials. In addition, USCIS improved its training curriculum to better ensure consistency and compliance with applicable statutes, regulations, and agency policy, including an update in 2014 of the new employee EB-5 training program and the establishment of an ongoing training focusing on recurring issues and petition cases that are novel in nature.

Further, as we reported in August 2015, USCIS provided its economists with access to data from the Regional Input-Output Modeling System (RIMS II) economic model in fiscal year 2013 that increased their capacity to verify job creation estimates reported by investors for investments in regional center projects. IPO program managers estimated that as of fiscal year 2015, about 95 percent of EB-5 Program participants used economic models to estimate job creation, with about 90 percent of those investors using RIMS II.[25] The RIMS II model is widely used across the public and private sectors and is considered to be among those valid to verify estimates of indirect and induced jobs reported for investments in regional center projects, according to USCIS and Department of Commerce (Commerce) economists, as well as industry and academic experts.[26] Indirect jobs include jobs that are not directly created by a regional center business, but may result from increased employment in other businesses that supply goods and services to the regional center business as well as induced jobs created from workers' spending of increased earnings on consumer goods and services.[27]

However, we also reported in August 2015 that the use of RIMS II data alone does not provide USCIS with the capacity to determine the location of jobs created, such as the number of jobs created in targeted

[25]The remaining 10 percent of program applicants use other standard commercially developed input-output models such as Impact Analysis for Planning (IMPLAN), Regional Dynamic Models (REDYN), and Regional Economic Models, Inc. (REMI).

[26]In the public sector, for example, the Department of Defense uses RIMS II to estimate the regional impacts of military base closings, and state Departments of Transportation use RIMS II to estimate the regional impacts of airport construction and expansion. In the private sector, analysts, consultants, and economic development practitioners use RIMS II to estimate the regional impacts of a variety of projects, such as the development of theme parks and shopping malls.

[27]IPO officials stated that in the EB-5 Program regulations, the sum of the indirect and induced jobs from an input-output model is defined as "indirect jobs." Under USCIS policy, indirect jobs are any jobs created by the qualifying investment but not occupied by individuals having an employee-employer relationship with the new commercial enterprise.

employment areas that most immigrant investors use to qualify for a lower investment amount. USCIS's May 2013 policy memorandum notes that Congress expressly provided for a reduced investment amount in a rural area or an area of high unemployment in order to spur immigrants to invest in new commercial enterprises that are principally doing business in—and creating jobs in—areas of greatest need.[28] IPO program managers stated that approximately 90 percent of immigrant investors qualify for a reduced investment amount—$500,000 instead of $1 million—to participate in the EB-5 Program because they are claiming investment in a commercial enterprise which will create employment in a targeted employment area.[29] The remaining 10 percent of immigrant investors pay twice that amount to participate in projects that are not limited to these locations. The IPO Economics Division Chief said that USCIS has not identified a need to verify the creation of jobs in a targeted employment area because the law permits regional center investors to use input-output models that do not have this capacity and program regulation and policy require that the investment capital be made available to the job creating entity which is principally doing business in the targeted employment area.[30] IPO economists we interviewed also said that given the relative ease of proving job creation through economic modeling compared with documentation requirements to prove creation of direct jobs, immigrant investors generally claim indirect jobs, rather than direct jobs, to qualify for the program.

[28]A "rural area" is defined as any area not within either a metropolitan statistical area (as defined by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). See 8 U.S.C. § 1153(b)(5)(B)(ii), (iii); 8 C.F.R. § 204.6(e), (j)(6)(ii). A technical limitation of input-output models as a whole is that they cannot predict when and where indirect jobs will be created.

[29]See 8 U.S.C. § 1153(b)(5)(B)(i), (C)(ii); 8 C.F.R. § 204.6(f).

[30]USCIS's May 30, 2013 Policy Memorandum states that for the purpose of the EB-5 Program, a new commercial enterprise is "principally doing business" in the location where it regularly, systematically, and continuously provides goods or services that support job creation.

USCIS Did Not Have a Valid and Reliable Methodology for Reporting Program Outcomes and Economic Benefits

In August 2015, we reported that USCIS's methodology for reporting EB-5 Program outcomes and economic benefits was not valid and reliable because it is based on the minimum program requirements for job creation and investment. To estimate job creation, USCIS multiplies the number of immigrant investors who have successfully completed the program with an approved Form I-829, by 10—the minimum job creation requirement per investor. To estimate overall investment in the economy, the agency multiplies the number of immigrant investors approved to participate in the program with an approved Form I-526, by \$500,000—the minimum investment amount, assuming all investments were made for projects in a targeted employment area. Accordingly, USCIS reported that from program inception in fiscal year 1990 through fiscal year 2014, the EB-5 Program has created a minimum of 73,730 jobs and more than \$11.2 billion in investments.

Our review and past GAO and DHS OIG audits of the program have pointed out the limitations of this methodology to report reliable program outcomes in that the data can be understated or overstated in certain circumstances.[31] For example, USCIS officials stated that 90 percent of immigrant investors reported creating more than the 10-job minimum, and 10 percent of immigrant investors pay \$1 million instead of \$500,000 because they invest in projects outside of a targeted employment area. Estimating economic outcomes using the minimum program requirements in these circumstances would lead to an underestimate of the program's benefits. For example we reviewed one project with about 450 immigrant investors that created over 10,500 jobs, or about 23 jobs per investor, while USCIS counted only the 10-job minimum per investor, a total difference of 6,000 jobs. Additionally, according to DHS's 2013 Immigration Statistics Yearbook, about 32 investors paid \$1 million instead of \$500,000 into the program in fiscal year 2013, a total difference of \$16 million not counted by USCIS.

Conversely, USCIS's methodology may overstate some economic benefits derived from the EB-5 Program. For example, the methodology

[31]The DHS OIG reported in 2013 that USCIS officials estimated the benefits of the EB-5 Program assuming the minimum requirements of the program had been met, and could therefore only speculate about how foreign investments affect the U.S. economy. See OIG-14-19. We reported in 2005 that USCIS officials "did not have reliable data indicating the total number of jobs created solely as a result of investments by EB-5 participants." See GAO-05-256.

assumes that all investors approved for the program will invest the required amount of funds, and that these funds will be fully spent on the project. According to IPO officials and our analysis of EB-5 Program data, there are far fewer investors who successfully complete the program than were approved for program participation, and the actual amount invested and spent in these circumstances is unknown. For example, our analysis showed that approximately 26 percent of all EB-5 investors who entered the program from its inception year through fiscal year 2011 may not have completed the process to show funds spent and jobs created with an approved I-829 as of the fiscal year ending in 2014.[32]

As we reported in August 2015, USCIS collects more complete information on EB-5 Program forms, but does not track or analyze this information to more accurately report program outcomes. Specifically, immigrant investors are required to report (and USCIS staff are to verify) the amount of their initial investment on the Form I-526, and to report the number of new jobs created by their investment on the Form I-829. However, USCIS officials said that they reported EB-5 Program outcomes using minimum program requirements because these are the required economic benefits stated in law, and that they are not statutorily required to develop a more comprehensive assessment of program benefits. We concluded that tracking and using more comprehensive information it collects on project investments and job creation on the Forms I-526 and I-829 submitted by immigrant investors and verified by USCIS would enable USCIS to more reliably report on EB-5 Program outcomes and economic benefits. We therefore recommended in our August 2015 report that USCIS track and report data that immigrant investors report, and the agency verifies on its program forms for total investments and jobs created through the EB-5 Program. DHS concurred and, as of February 2016, officials anticipated developing a data system that will enable USCIS to track and report data immigrant investors report in fiscal year 2017.

[32]Immigrant investors who did not complete program requirements as of the end of fiscal year 2014 fall into an aggregated category made up of investors who were not yet eligible to file Form I-829, did not timely file, or filed their I-829 petitions which were denied or decisions were still pending. We counted approved Form I-526 petitions through the end of fiscal year 2011 to account for (1) Form I-485 (adjustment of status) and DS-260 (immigrant visa) application processing times, (2) the fact that an immigrant investor does not become eligible to file a Form I-829 petition until 90 days before the expiration of his or her 2-year conditional residency period, and (3) Form I-829 petition processing time

USCIS-Commissioned Study to Assess Overall Program Benefits Addressed Some Past Limitations but not the Costs of the EB-5 Program

We reported in August 2015 that USCIS had commissioned the Economics and Statistics Administration (ESA) of the Department of Commerce (Commerce) to conduct a study of the economic impact of the EB-5 Program. USCIS undertook this action in response to a December 2013 DHS OIG recommendation that USCIS conduct a comprehensive review of the EB-5 Program to demonstrate how investor funds have stimulated the U.S. economy. As of June 2015, USCIS and ESA had not yet finalized the methodology for the new study; however, ESA and USCIS approved a statement of work in November 2014 that outlined a preliminary methodology and study steps that would address some, but not all, shortcomings of prior studies of the overall EB-5 Program benefits. We reported that ESA officials planned to finalize the study methodology once they completed a review of the program data submitted by IPO, and to issue a final report in November 2015.

However, the study was not intended to address the program's costs, which are important for assessing a program's net economic impact. Both USCIS and ESA officials confirmed the study would be an economic valuation which, unlike an evaluation, considers only the benefits of economic activity, and does not assess the program costs. USCIS officials said the decision was made not to assess the program costs due to associated challenges and because the information may not justify the investment. Our review of the draft methodology, however, showed some potential to include some cost information. Specifically, ESA officials said that after consulting with USCIS officials, they planned to collect information related to the permanent residence of the immigrant investors and their dependents to estimate the value of household spending. IPO officials said that ESA may also collect information that may help to estimate or disclose some of the costs associated with the program. To help provide Congress and other stakeholders with more comprehensive information on the overall economic benefits of the program, we recommended in our August 2015 report that USCIS include a discussion of the types and reasons any relevant program costs were excluded from the Commerce study. DHS concurred and said that USCIS IPO would recommend to Commerce that a description of potential costs not assessed as a part of the study be included when the study is published. In February 2016, USCIS officials stated that the study had not yet been published and estimated it would be completed by May 2016.

Chairman Goodlatte, Ranking Member Conyers, and members of the committee, this completes my prepared statement. I would be happy to respond to any questions you or members of the committee may have.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement included Seto Bagdoyan, Director; Cindy Ayers; Krista Mantsch; Taylor Matheson; Jan Montgomery; Jon Najmi; Edith Sohna; and Nick Weeks. Other contributors to the report on which this statement is based are listed in the report.

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Mr. GOODLATTE. Thank you, Ms. Gambler.

Welcome, Ms. Calderon and Mr. Friedman.

TESTIMONY OF JEANNE CALDERON, CLINICAL ASSOCIATE PROFESSOR, STERN SCHOOL OF BUSINESS, NEW YORK UNIVERSITY

Ms. CALDERON. Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee. Thank you for inviting me to testify, I have been a professor at the NYU Stern School of Business for almost 30 years. My Stern colleague and husband, Gary Friedland, is sitting behind me. We have co-authored two major papers——

Mr. GOODLATTE. Really almost put that microphone, like, within an inch of your mouth. Then we will be able to hear you much better.

Ms. CALDERON. Oh, I didn't realize. Should I start again?

Mr. GOODLATTE. Pull it really close, yeah. Move it over real close to you.

Ms. CALDERON. This morning I will make four points. The original congressional intent in 1990 was to limit the TEA designation to rural and depressed inner-city areas. But Congress should consider taking a fresh look to incentivize project types and locations that it deems appropriate in today's world.

Gerrymandering is census tract aggregation that sometimes permits projects located in luxury areas to qualify for the TEA discount. CIS contributed to the current gerrymandering system, but has the authority to remedy this as an alternative to legislative solution. And finally, creating appropriate visa reserves might be as important as redefining a TEA to simulate investment in certain locations or project types.

Since 2010, the program has been primarily used for real estate projects. EB-5 serves as a government subsidy to developers because the visa motivates the investor to accept a negligible rate of return that results in a below-market interest rate loan, a major savings to the developer.

This subsidy is available to all developers, whether or not the project is located in a TEA. In general, the minimum investment amount is $1 million project, except if the project is located in a TEA the amount is reduced to $500,000. A TEA is defined simply as any rural location or, if an urban area, it meets a defined high unemployment standard.

The legislative history illuminates congressional intent. Senator Boschwitz cosponsored, with Senator Phil Gramm, the amendment that added the TEA framework to the Senate bill that became the 1990 Immigration Act. He emphasized that the reduced amount was primarily aimed to stimulate immigrant investment in rural areas, but also intended for depressed areas or inner cities. Senator Paul Simon, in a conference report, expected that most investors would invest at the $1 million level.

Contrary to this original intent, under the current system virtually all projects qualify as being located in a TEA, including those in luxury areas. So all immigrants invest at the discounted amount. The reauthorization provides Congress with the opportunity to take a fresh approach as to which locations or project

types should be incentivized without being constrained by the original intent.

To test whether new TEA definitions meet Congress' objectives, perhaps it should map the locations in key cities to verify which areas would likely be incentivized. "Gerrymandering" is a term applied to census tract aggregation to expand the boundaries of the areas to qualify as a TEA.

Census tracts are added to the project's tract with the aim that the combined area's unemployment rate meets the high unemployment standard. If the project is located in a census tract that meets the standard, the area is a TEA. If not, then gerrymandering allows the addition of census tracts to the project's tract until the combined area meets the high unemployment standard. This could be as simple as adding one bordering tract or it could necessitate adding virtually a countless number until the standard is met, often relying on a remote tract's poor economic conditions to justify the TEA designation.

The problem occurs because each State creates its own rules to define a TEA. How did this happen? CIS has been fostering gerrymandering since 1991. When the EB-5 law was passed, CIS' predecessor chose to delegate its authority to make all TEA designations to the individual States without any rules, oversight, or audits. The States motivated to promote economic development approve virtually every project.

As Chief Colucci has acknowledged, CIS has the power to correct this. It could establish uniform, objective TEA rules for the States to apply or it could revoke the States' authority and transfer it to the CIS national office as contemplated by the Senate reform bill.

Should I finish?

Visa reserves. The reform bill that died in December proposed to reduce the spread to $200,000 for the minimum investment amount between TEA and non-TEA projects. Since the immigrant's sole reason to invest is to secure the visa, a visa reserve that moves the investor toward the front of the visa line for investments in certain project types or locations may become more important than investing $200,000 less on a very low interest loan. This becomes especially important as the visa waiting period approaches 8 years for Chinese investors.

Visa reserves may be an effective tool to incentivize certain investments, but Congress should be mindful of which project types or locations gain the visa priority. Those investors who aren't granted the visa reserve may decide not to invest in this program.

Thank you.

[The prepared statement of Ms. Calderon follows:]

TESTIMONY
Jeanne Calderon

Jeanne Calderon
Clinical Associate Professor
Stern School of Business
New York University

Hearing on
"Is the Investor Visa Program an Underperforming Asset?"

Before the
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.
February 11, 2016

Chairman Goodlatte, Ranking Member Conyers and Distinguished Members of the Committee:

Thank you for inviting me to testify today about the EB-5 immigrant investor program (the "Program").

My name is Jeanne Calderon. I am a clinical associate professor at the NYU Stern School of Business where I have taught law and ethics courses since 1986.

I have conducted research on EB-5 and have prepared two academic papers with my NYU Stern colleague Gary Friedland. We jointly teach a course that focuses on the legal, tax and finance aspects of commercial real estate transactions. We created the course and developed all of the course materials. A segment of this course focuses on foreign investment in the United States, including EB-5 capital. This testimony reflects our collective views.

Our first paper was released in early 2015 and provides a comprehensive overview of how EB-5 capital has become a mainstream source of capital to fund large-scale real estate development projects in major urban areas. We also compiled an extensive database of 25 of the largest real estate development projects that are utilizing, or have utilized, EB-5 capital, *each* ranging from $50 Million to $600 Million, with a cumulative potential EB-5 capital raise of $4.6 Billion.[1] We are in the process of updating this database to reflect the surge of recent market activity.

[1] Jeanne Calderon and Gary Friedland. *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects.* (May 22, 2015). New York University Stern Center for Real Estate Finance Research. Available at:
http://www.stern.nyu.edu/sites/default/files/assets/documents/EB5%20paper%20final%205.24.2015.pdf

Our most recent paper was released as a working draft on December 23, 2015 within a week after the reform bill, S. 1501, failed in mid-December of 2015. This paper focuses on the definition of urban area Targeted Employment Areas ("TEAs") and related matters because those were the most controversial portions of the bill. We described the three alternative approaches considered by the discussion drafts based on the reform bill in December 2015. We compared each of the alternatives. We also explained how each of the alternatives might have impacted projects in New York City, because it is at the epicenter of the debate. We also illustrated these points with maps and data. The most recent version of this paper is dated February 6, 2016.[2]

I have included links to each of these papers in the footnotes at the bottom of this page. I request that these papers be incorporated for the record into the statement that I am presenting today.

This morning my testimony will focus on TEAs: the original intent of the EB-5 law; "gerrymandering"; USCIS' role in fostering gerrymandering and its authority in designating TEAs; and visa reserves.

EB-5 Progrom

In 1990, Congress created the fifth employment based preference (EB-5) immigrant visa category for foreign nationals seeking to invest in a commercial enterprise that will create at least 10 U.S. jobs per investor.[3] Its purpose is to stimulate the U.S. economy through job creation and capital investment.[4]

Underutilized for the first 20 years since its enactment in 1990, the EB-5 Program became popular during the financial crisis when conventional sources of capital dried up. As the market has rebounded, EB-5 capital has evolved into a mainstream source of capital, particularly for real estate development projects.[5]

What is a TEA?

The statute provides that "[I]n general," the minimum amount of capital to be invested by an immigrant seeking an EB-5 visa is $1,000,000. The amount is reduced to $500,000 if the

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[2] Jeanne Calderon and Gary Friedland. *What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data.* (Last revised February 6, 2016) New York University Stern Center for Real Estate Finance Research. Available at:
http://www.stern.nyu.edu/sites/default/files/assets/documents/What%20TEA%20Projects%20Might%20Look%20Like%20under%20EB5%202.0%20Alternatives%20with%20Maps%20and%20Data%202%206%2016.pdf

[3] Immigration Act of 1990, Pub. L. 101-649, Stat. (November 29, 1990).

[4] USCIS Policy Memorandum (PM-602-0083), May 30, 2013. Available at:
https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf

[5] See *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects.* Supra at note 1.

investment is made in a project located in a TEA. [6] Thus, a project's qualification as a TEA determines whether the immigrant can qualify for the EB-5 visa by making an investment of $1,000,000 or $500,000. Investors strongly prefer to minimize the amount they invest in a project utilizing EB-5 capital. They typically earn less than 1% per annum under the typical loan structure because their motive for making the investment is to obtain a visa.[7]

The statute provides two routes for a project location to qualify as a TEA. First, any project located in a rural area qualifies. In urban areas, a project qualifies only if it is located in a "an area which has experienced high unemployment (of at least 150 percent of the national average [unemployment] rate)." [8] We will refer to this as a "high unemployment area."

What Was Congress' Original Intent in Establishing the TEA Concept?

The controversy surrounds the determination of what constitutes a "high unemployment area" in an urban area.[9] The statute objectively defines "high unemployment" by reference to the national average unemployment rate. However, the "area" or boundary against which the high unemployment should be measured is not defined in the statute. Presumably, Congress left it to the Federal immigration agency to make this determination. As discussed below in the "USCIS" section, unfortunately the agency did not take the opportunity to define this. The plain meaning of the scope of the intended "area" is not clear; thus, we turned to the legislative history to determine Congressional intent.

The legislative history is illuminating. The original bill that became the Immigration Act of 1990, S. 358[10], included an employment-based visa for immigrants who invest capital in a new commercial enterprise that creates 10 jobs per investor. The required investment amount was set at a single level - $1,000,000.[11]

On July 13, 1989, the day the Senate bill was later approved by the full Senate, Senators Boschwitz and Gramm introduced an amendment that ultimately became the framework for the TEA definition incorporated in the Immigration Act of 1990 (the "Immigration Act"). This amendment established two-tiers of investment: one at "not less than $1,000,000", and the other at "not less than $500,000" for investments in "rural areas or areas which have experienced persistently high unemployment... of at least one and one-half times the national average rate." [12] The Amendment did not use the term "Targeted Employment Area," but the definition is substantially

[6] INA § 203(b)(5)(C); 8 C.F.R. § 204.6(f). Technically, the statute authorizes a third minimum investment level - an amount up to $3M - for areas of unemployment "significantly below" the national average unemployment rate . INA § 203(b)(5)(C)(iii).

[7] See *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects.* Supra at note 1.

[8] INA § 203(b)(5)(B)(ii).

[9] Again, a rural area qualifies as a TEA, irrespective of the relevant unemployment rate.

[10] S. 358, 101st Cong. 1989-1990.

[11] Id.

[12] Amendment #264 to S. 358 (July 13, 1989)

the same as the language that appears in the EB-5 section of the Immigration Act. Without this amendment, the TEA concept might not exist.

Senator Boschwitz's remarks on the floor of the Senate make clear his purpose in creating the TEA. He opened his remarks by stating that the amendment was offered to "attract significant investment in rural America." He pointed out that he was "especially concerned with the rural investment this amendment would support." [13]

Senator Boschwitz explained that investments in rural or high unemployment areas were intended for those who invest in "rural or depressed areas." The Senator continued that he "sees no reason to shut out willing investors while our small towns and inner cities across America are facing hard times."[14]

Although the amendment did not include a requirement that the immigrant demonstrate that the enterprise would not otherwise be able to obtain financing, the Senator expressed his concern that "[rural] areas have great difficulty attracting the investment capital so needed for economic growth." [15]

The amendment included a visa reserve or set aside for 2,000 investors in rural areas. The Senator noted that in addition to these reserved visas, the remaining visas could also be used by rural investors.[16] Senators Boschwitz and Gramm obviously expected greater rural investment participation than the EB-5 Program has achieved.

Thus, the Senators created the TEA concept to incentivize rural projects and, to a lesser extent, enterprises in depressed areas or inner cities. Conspicuously absent from the Senator's extensive remarks was any reference to high unemployment areas. It appears that the amendment inartfully defined depressed areas or inner cities by utilizing the "high unemployment area" concept as a method to define those areas.

In connection with the Conference Committee Report to the Immigration Act, Senator Paul Simon echoed Senator Boschwitz's sentiments:

> "[W]e are mindful of the need to target investments to rural America and areas with particularly high unemployment – areas that can use the job creation the most... America's urban core and rural areas have special job creation needs."[17]

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[13] 135 Cong. Rec. S7,858-02 et seq. (July 13, 1989)
[14] Id.
[15] Id. However, the amendment's text did not include a "but for" test.
[16] Id. The Immigration Act increased this reserve to 3,000, when the quota amount increased from 6,800 to 10,000, but maintained essentially the same percentage of visa reserves to the annual quota for this category, 30%).
[17] 136 Cong. Rec. S 17,106, 17,110 (October 26,1990)

Furthermore, Senator Simon recognized the importance of establishing a wide spread between the standard investment amount of $1,000,000 and the reduced amount to attract investors to targeted employment areas: "The Attorney General is authorized to set the required investment at a lower amount but at least $500,000. Clearly, the closer the Attorney General sets this to $500,000, the more we can encourage investments in these critical areas."[18]

Finally, when the EB-5 Program was created, Congress expected that most foreign investors would invest at the $1,000,000 amount. Senator Simon continued: "One section of the [Immigration Act of 1990] that I am particularly pleased to have included from my original bill is the employment generating investor visa provision...The general rule – and the vast majority of investor immigrants will fit in this category – is that the investor must invest $1 million and create 10 U.S. jobs."[19]

It is obvious that when Senators Boschwitz and Gramm proposed the TEA concept in 1989, and when the law was enacted a year later, Congress did not contemplate the current, predominant use of EB-5 capital. The percentage of projects qualifying as TEAs has skyrocketed from the early years of the Program to the point where almost 98% of EB-5 projects qualify as a TEA.[20] We note that each of the 25 projects in our database of large-select real estate development projects utilizing EB-5 capital is located in a TEA.[21]

EB-5 Capital is a Subsidy Available to All Projects, Not Limited to Projects Located in TEAs

The required amount invested by the immigrant is typically deployed to the project as a below-market rate loan.[22] The immigrant invests in the project solely to qualify for a visa. The visa eligibility motivates the investor to accept negligible returns that result in a below-market interest rate loan being made available to the developer's project.[23] This savings to the developer is the equivalent of a government subsidy that is available because the government is willing to issue an EB-5 visa to the immigrant as the incentive for his investment.[24]

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[18] Id.
[19] Id.
[20] The percentage of conditional visas issued based on investing in projects in a TEA rose from 10% in 1992, to 41% in 2002 to an estimated 98% in 2014. See DHS Yearbook of Immigration Statistics (FY1992-FY2013); State Department preliminary data (FY2014). Also see Lazaro Zamora and Theresa Cardinal Brown. *EB-5 Program: Successes, Challenges, and Opportunities for States and Localities.* (September 2015). Bipartisan Policy Center.
[21] See *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects*. Supra at note 1.
[22] See *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects*. Supra at note 1.
[23] Id. The proceeds invested in the EB-5 vehicle are typically deployed to the project as a mezzanine loan at a discounted rate compared to the rate charged by conventional mezzanine lenders.
[24] The benefit to the U.S. economy is the creation of jobs and capital investment by the immigrant investor. However, a GAO Report points out the USCIS methodology might overstate some of the economic benefits derived from the EB-5 Program. For example, EB-5 capital is credited with 100% of the jobs created by the project even though the project may be primarily funded with capital from other sources. USCIS does not track whether alternative sources of capital might be available to fund the project if EB-5 capital were not provided. Government

Although the subsidized, inexpensive capital is accessible to all developers who participate in the EB-5 program, the reduced investment amount ($500,000) is limited to those projects which are located in a TEA. The purpose of the EB-5 program generally is to promote jobs and capital investment by immigrant investors. The purpose of the TEA is to provide a discounted investment amount by those investors who invest in projects that meet the TEA definition. Yet, over time, the Program's purpose and the TEA's purpose - to identify those locations that deserve a special incentive - have become intertwined.

However, some developers contend that if the TEA designation were not extended to their projects then, as a practical matter, the government subsidy would not be available to them because immigrant investors would pursue investments only in TEA projects. Given that virtually all project qualify for TEA status, no data exists to support or refute this contention.

The Prevalence of Urban Area TEA Projects in Today's Market

Due to the manner in which the TEA rules are applied under the current system (described in the USCIS section below), almost all areas in the entire country qualify as a TEA. Thus, the discounted investment level is available for immigrant investors in essentially all projects.

Currently, despite the $500,000 statutory spread between the minimum amount required to be invested in a TEA project ($500,000) and a non-TEA project ($1,000,000), in the real world the spread is $0 because virtually all project locations qualify as a TEA. Immigrants have the choice to invest in any project type in any location at the same discounted investment amount of $500,000. Consequently, it is not surprising that a substantial percentage of immigrant investors select projects located in thriving, urban areas by well-financed developers with a strong track record of successfully completed projects. These projects are more likely to be completed, and on time. The investors perceive that these types of projects will accelerate the time frame within which they will secure the visa and recover the $500,000 investment. The current trend does not necessarily mean that the immigrants would not invest in projects located in a rural or depressed areas, but given the same required investment amount, they prefer to invest in projects located in thriving, urban areas.

Factors to be Considered by Congress in Redefining TEAs

If Congress seeks to limit the project locations that qualify as a TEA, then it must establish clear, unambiguous and objective criteria to determine which locations are deserving of the incentive that permits immigrants to invest a discounted amount. Investors in all other projects would be

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Accountability Office. *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits* (August 2015). Available at: http://www.gao.gov/assets/680/671940.pdf.

required to invest at a higher investment amount, so a spread between the minimum investment amounts would be achieved in practice.[25]

Of course, Congress is not bound or limited by its original intent for establishing the TEA concept with a reduced investment amount. The 2016 reauthorization presents Congress with an opportunity to take a fresh look at the TEA definition. Congress may decide to consider which locations and/or project types should be entitled to the discounted investment amount. In making this determination, Congress might wish to consider the manner in which the EB-5 Program has evolved, as well as how our nation's cities have changed since 1990.

As Congress considers the appropriate revisions to the TEA definition, it should be mindful that the EB-5 Program was woefully underutilized until the Program was liberalized and became more readily available as a funding source for real estate development projects. As recently as 2009, the USCIS Ombudsman conducted a study to determine ways to promote the Program in danger of being terminated for lack of use.[26] Furthermore, the increased investment activity under the Program has coincided with the rising percentage of projects that have qualified as a TEA, as well as the rebound in the real estate market.[27] Thus, Congress' proposed action requires a delicate balance between appropriately narrowing the scope of the TEA and building in flexibility to avoid the Program reverting to the underutilized state that existed before 2010. This is particularly important as the current stock market activity may signal more fragile economic conditions on the horizon.

The EB-5 Program is radically different than when it was created in 1990 as a direct investment program. The current EB-5 capital market is dominated by real estate development projects in urban areas, where it is commonplace for EB-5 capital raises to exceed $50M.[28] EB-5 capital typically represents less than 40% of such projects' total capital costs. Large projects result in more jobs filled by workers commuting from more distant locations. Similarly, the economic conditions and development patterns in many inner cities in 2016 are much different than those that existed in 1989 and earlier, especially in Gateway cities where immigrants are investing.[29]

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[25] A separate but related issue is the required investment amount for a TEA and a non-TEA project. The last discussion draft based on S.1501 set the amounts at $800,000 and $1,000,000. We believe the spread between the two amounts is more important than the absolute dollars. However, we do not have any data to support the appropriate spread necessary to stimulate investment in TEA projects based on a reduced investment amount, nor the amount that would result in a substantial reduction in investment in non-TEA projects with a greater required investment amount.

[26] https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf

[27] USCIS' liberal policy changes in 2009 made EB-5 capital accessible to a wider range of real estate development projects. See *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects*. Supra at note 1.

[28] See *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects*. Supra at note 1.

[29] See, for example, Richard Florida. *The Fading Differentiation between City and Suburbs*. (January 31, 2013). Urbanland. Available at: http://urbanland.uli.org/economy-markets-trends/the-fading-differentiation-between-city-and-suburb/

These factors should be taken into account by Congress as it decides which locations and/or project types should be entitled to TEA or equivalent incentives.

It is easy to justify extending the TEA discount to certain project types irrespective of location. S. 1501 proposed that the reduced TEA investment amount be available for certain project types regardless of location, including public infrastructure projects, manufacturing projects and closed military bases. This reflects an updated approach as to the types of projects to be incentivized. Unlike the urban area TEA definitions contained in S.1501 and discussion drafts based on it, these favored project types apparently did not engender controversy as the bill underwent revision during December of 2015.

The challenge is to develop a TEA definition for urban areas that Congress determines is appropriate to incentivize. Our most recent paper explores the three alternatives considered by the S. 1501 and the discussion drafts based on it that were circulated in December 2015.[30] We realize, however, that when Congress introduces a new reform bill later this year, the bill might not reflect any of those alternatives.

After Congress drafts proposed legislation to reflect the locations and types of projects that it determines are appropriate to incentivize through TEA treatment, we suggest that Congress map the locations in key cities, based on available data, to test whether the coverage would extend only, or at least primarily, to the desired locations. This would be similar to the approach we followed in our paper that sought to measure the impact of the three alternative TEA definitions on New York City.[31]

What is Gerrymandering?

Gerrymandering is a pejorative term for census tract aggregation. In urban areas, the determination of whether a project location qualifies as a TEA depends solely on whether the project is located in a "high unemployment area". As previously explained, the standard is whether the unemployment rate of the "area" is at least equal to 150% of the national average unemployment rate. Although the statute does not refer to census tracts, the unemployment rate is commonly measured by reference to individual census tracts.[32] Thus, the census tract in which the project is located is the starting point for the determination of whether a project location qualifies as a TEA.

If the census tract in which the project is located ("Project Tract") meets the TEA's high unemployment standard, then the Project Tract is a TEA. This is sometimes known as a "single census tract" TEA.[33]

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[30] See *What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data*. Supra at note 2.
[31] See *What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data*. Supra at note 2.
[32] USCIS Policy Memorandum. Supra at note 4.
[33] See S.1501 https://www.congress.gov/bill/114th-congress/senate-bill/1501/text

However, in a thriving, urban area many tracts do not qualify as a single census tract TEA. As a city's economic conditions improve, unemployment rates decline and fewer tracts meet the high unemployment standard. Thus, the project developer seeks to add contiguous tracts to the Project Tract to expand the boundaries of the combined area against which the high unemployment rate will be measured to determine whether this area will constitute a TEA. The practice has developed where project developers in urban areas add contiguous census tracts to the Project Tract until the combined area achieves a weighted average unemployment rate that meets the high unemployment standard. This assemblage enables the Project Tract to qualify as a TEA.

The combination might be as simple as adding a single census tract with a high unemployment rate to the Project Tract (that does not meet the necessary unemployment rate) to qualify the combined area as a TEA. As an example, the project could be located towards the edge of a census tract with less than "high unemployment". However, the bordering census tract meets the "high unemployment" standard. The combination of these two tracts might enable the Project Tract to qualify as a TEA.[34]

Often, many more tracts must be combined with the Project Tract to qualify as a TEA in thriving, urban areas. [35] Although the rules vary from state to state as explained in the "USCIS' Role in Fostering Gerrymandering" section below, the states generally follow a common approach. The combined area that will form the potential TEA starts with the Project Tract. The project developer identifies the closest tracts with high unemployment rates, which in thriving, urban areas are often in more remote locations from the project's location.

The path of the potential TEA follows the shortest route in any direction from the Project Tract to reach the tracts with the highest unemployment rates. Tracts with low unemployment rates are sought to be bypassed because their inclusion would reduce the combined area's unemployment rate. This could disqualify the combined area as a TEA if the state, such as California, sets a maximum limit on the number of tracts that may be combined.[36] In other states, such as Texas, significantly more tracts may be added until the high unemployment standard is met for the combined area.[37]

As a result, many TEAs take on unnatural, winding configurations, and the route's direction from the Project Tract varies from TEA to TEA. A criticism lodged by some is that this type of census tract aggregation constitutes gerrymandering because the poor economic conditions (i.e., high

[34] Unrelated to a TEA requirement, this activity might produce the ancillary benefit of spurring further economic development in both tracts.
[35] See, for example, http://www.wsj.com/articles/how-immigrants-cash-funds-luxury-towers-in-the-u-s-1441848965
[36] The state of California imposes a maximum of 12 contiguous tracts that may be combined in a TEA. http://business.ca.gov/International/EB5Program.aspx
[37] See, for example, http://www.law360.com/articles/726026/group-sues-over-alleged-gerrymandering-in-eb-5-program

unemployment) of distant, remote tracts enable a Project Tract (with low unemployment) to qualify as a TEA. This is perceived to be particularly egregious where the Project Tract and surrounding tracts are "luxury" areas.[38]

Our second paper discusses Senator Flake's bill that would tie the TEA definition to commuter traffic patterns relating to the project.[39] The proposal implicitly posits that the TEA should be expanded to encompass the geographic area within which the workers commute to the project site. Although this is consistent with the job creation purpose of the EB-5 Program, it does not reflect the economic condition of the location where the immigrants' capital investment is made, i.e., the project tract.[40] If Congress seeks to incentivize development in areas which encounter difficulty in attracting the investment capital needed for economic growth, this would not be an appropriate use. More importantly, this type of standard would likely perpetuate the current practice, with the result that most large projects in luxury areas would continue to qualify for TEA status. Thus, if Congress' intention is to narrow the locations that qualify as a TEA, this standard should not be incorporated. This would be consistent with the sentiments expressed by Senators Simon and Boschwitz.

USCIS' Role in Fostering Gerrymandering

The EB-5 provisions of the Immigration Act and the Immigrant Investor Pilot Program vest the Federal immigration agency - originally the Immigration and Naturalization Service ("INS") and now USCIS - with the responsibility to administer the EB-5 visa program. This implicitly includes the authority to designate the area that constitutes a high unemployment area for purposes of a TEA.

However, in regulations adopted in 1991, in a single paragraph, INS delegated its authority to make TEA designations to the individual states.[41] The agency granted blanket authority, without establishing any rules or guidelines, and did not reserve the right to review or audit each state's TEA determinations.[42] We believe that INS' delegation was appropriate in 1991 because as an immigration agency, with no existing investor program, it lacked experience and personnel with the expertise to make the required economic determinations.

In USCIS' May 30, 2013 comprehensive Policy Memorandum, it acknowledges that the TEA designation is to be limited to enterprises that are doing business in, and creating jobs, in the

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[38] See http://www.wsj.com/articles/posh-tower-proposed-for-struggling-new-york-neighborhood-central-park-south-1444728781?tesla=y

[39] See *What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data*. Supra at note 2.

[40] Even if this commuter pattern approach were followed, the economic model upon which most job estimates are calculated does not indicate how many workers, if any, commute from residences in high unemployment areas.

[41] 8 C.F.R. 204.6(i), effective November 29, 1991.

[42] Even today, USCIS only reserves the right to review the state's determination of the unemployment rate and to assess the method by which the state authority obtained the employment statistics. USCIS Policy Memorandum. Supra at note 4.

areas of "greatest need."[43] Yet, more than 25 years after INS delegated TEA authority, USCIS continues to defer to state determinations of the appropriate boundaries that constitute TEAs.[44] Of course, we recognize that if S. 1501 had become law, TEA determinations would be made by USCIS rather than the individual states.

USCIS' continued delegation to the states of the TEA authority without guidelines results in the application of inconsistent rules by the various states. More importantly, each state has the obvious self-interest to promote economic development within its own borders. Delegation presents an opportunity for the states to establish lenient rules to enable project locations to qualify as a TEA. Compounding the problem, often the state agency that is charged with making the TEA determination is the same agency that promotes local economic development. As a consequence, virtually every EB-5 project location qualifies as a TEA.[45] Gerrymandering more easily developed because the self-interested individual states were granted the opportunity to establish their own rules without any guidelines or oversight by the Federal government.

USCIS' Current Opportunity

Although we are not advocating that USCIS should take action as an alternative to legislative change by Congress, we point out that USCIS already possesses the power to change the manner in which TEA determinations are made.[46] USCIS has at least two basic choices, if it decides to act.

USCIS could formulate uniform standards for making TEA determinations that would be applied by the different states. Obviously, these standards should be objective and easily applied. In addition, presumably USCIS would exercise power of oversight, review and audit. At the Senate Judiciary Committee Hearing on EB-5 reform that was conducted on February 2, 2016, Mr. Nicholas Colucci, Chief of the Immigrant Investor Program Office for USCIS, stated that the USCIS is in the process of drafting regulations to address this.

USCIS could simply use the California model as a starting point.[47] Many factors might be considered.[48] Also, it might choose to consider one or more of the urban area TEA definitions

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[43] USCIS Policy Memorandum. Supra at note 4.

[44] Id.

[45] Data is not readily available as to the percentage of TEA determination letter requests that are approved or denied by each state.

[46] Obviously, this would be subject to compliance with the Administrative Procedure Act.

[47] See http://business.ca.gov/International/EB5Program.aspx

[48] Matters to consider would include: the appropriate dataset and methodology for unemployment rate calculations; whether factors other than unemployment rate should be considered; whether certain tracts should be excluded; whether, if a maximum number of tracts were set, what the maximum number should be; whether the combined TEA area should reflect the smaller size of census tracts in densely populated urban areas; and whether workers' commuter traffic patterns should be taken into account.

set forth in the discussion drafts based on S.1501 that circulated in December of 2015.[49] Further discussion of this is beyond the scope of this testimony.

Alternatively, USCIS could revoke the authority delegated to the states, and administer the TEA designation process from its national office in Washington, D.C. Obviously, this would necessitate formulating and implementing standards and procedures at a time when the agency is processing a record number of applications and petitions.[50] We note that S. 1501 provided that TEA determinations would be made by USCIS.

USCIS might not have the authority to apply the TEA investment amount to certain project types (such as infrastructure, manufacturing and closed military bases), because the existing statute defines a TEA by reference to a location, rather than a project type. We also point out that the statute provides for the minimum investment amount for a TEA and a non-TEA project to be increased without Congressional action. [51] This is beyond the scope of my testimony.

Why Visa Reserves Might Be As or More Important Than TEA Project Qualification

A project's qualification for visa reserves might become as important, or even more important, as a determining factor in the immigrant's decision to invest in a particular project. This is explained in pages 50 through 54 of our paper, *"What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data."*

Visa reserves are an alternative method for Congress to stimulate investment in those locations or project types that Congress may wish to incentivize.[52] As the visa waiting periods extend to at least 6 years, the right to move towards the front of the visa line may be more important than qualifying for an investment at a lesser amount. Many wealthy investors will be motivated by the quickest path to securing a visa, than merely qualifying for a lesser investment amount.

The discussion drafts based on S. 1501 would have increased the minimum investment amount to $800,000 for projects located in a TEA, while retaining the minimum amount at $1,000,000 for projects not located in a TEA. This $200,000 differential would reflect a narrower spread than the $500,000 provided under existing law. However, if the TEA definitions are tightened and strictly enforced, the $200,000 would represent an increase in the "real world" spread. Presumably, this would stimulate some investors to select TEA projects, but undoubtedly some of the wealthy investors who utilize this Program will still be attracted to large projects by major developers that the investors perceive to be safer and more likely to be completed. Thus, the narrower spread increases the importance of the visa reserve.

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[49] For a discussion of the different approaches, see *What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data*. Supra at note 2.
[50] See written testimony of Nicholas Colucci (Chief of the Office of Immigrant Investor Program) at the Senate Judiciary Committee on EB-5 Reform conducted on February 2, 2016.
[51] INA § 203(b)(5)(C); 8 C.F.R. § 204.6(f).
[52] *What TEA Projects Might Look Like under EB-5 2.0: Alternatives Illustrated with Maps and Data*. Supra at note 2.

Although visa reserves are likely to be an effective tool to stimulate investments in projects which entitle the investors to a visa reserve, Congress should carefully consider the potential impact that the visa reserve may have on those projects that do not qualify. The considerations are similar to those that apply to determining which projects qualify for TEA treatment.

Thank you again for the opportunity to appear before this Committee. I would be happy to respond to your questions.

Mr. GOODLATTE. Thank you.

Mr. Gordon, welcome.

TESTIMONY OF MATT GORDON, CHIEF EXECUTIVE OFFICER, E3 INVESTMENT GROUP

Mr. GORDON. Chairman Goodlatte, Ranking Member Conyers, and other Members of the Committee, thank you for allowing me to testify on this important topic. My name is Matt Gordon, and I am Chief Executive Officer of E3 Investment Group. We are a New York City-based private equity firm whose mission is the harmonious synthesis of economic and social value creation. We focus exclusively on the direct side of the EB-5 program, as all of our partner investors' capital creates more than 10 jobs each, so we do not need the econometric labor creation calculations afforded to the regional centers.

E3 Investment Group's flagship, of which I am chairman, is E3 Cargo, an Indianapolis, Indiana-based trucking company. I am also one of the founding members of the More American Jobs Alliance, or MAJA. MAJA's constitutional principle is to maximize the social impact for America from the jobs created by the EB-5 program, in particular by focusing on the creation of the jobs in true economically distressed and rural areas.

Since coming to the EB-5 program, I have done a significant amount of policy and academic work. I'm the editor of the EB-5 legal treatise entitled "The EB-5 Book" and I have helped lead researchers of ICIC.org with their work related to EB-5 capital in distressed urban communities that culminated in a policy forum at the Harvard Kennedy School.

The apt title of this hearing questions whether the EB-5 program is underperforming. Unfortunately, the answer is resounding yes. The EB-5 program consistently fails to maximize social value created for the green cards that our country invests in the process.

The goal of the program is not to enrich real estate developers or others, like myself, who use the EB-5 program as a capital-formation vehicle for their businesses. The goal is to create jobs for America, and the sponsors are never worthy of protecting or perpetuating for their own sake.

An important part of the program was the creation of the policy behind targeted employment areas. Target employment areas are supposed to turbocharge the social benefit resulting from the job creation by focusing it in economically distressed areas. Simply put, job creation in distressed areas is more valuable to our society. The mechanism to incentivize this behavior is the lowered investment threshold from $500,000 for investments that are made in a TEA.

TEA policy has been a failure, because it is not only possible but relatively easy to get any location in America designated as a targeted employment area. Despite the policy goal of wanting to help distressed urban and rural communities who desperately need the additional investment capital, virtually all EB-5 capital goes into prosperous, wealthy areas.

There are those who believe that TEAs are working just fine and want to perpetuate the status quo. Their argument is premised on a labor mobility model to support the idea that TEAs are fulfilling their policy objective if the project built in a low unemployment

area draws workers who live in high unemployment areas. To frame this debate, it is either about helping the area or about helping the people who may or may not come from the area to work.

I submit that a geographically anchored framework must prevail. Structural investment in an area has the premise to effect structural economic change to that area and its population. Labor is always mobile, areas are not. A TEA is a targeted area and so it should remain.

Some frame the debate as urban versus rural. I submit that it is about helping the geographical areas that have versus the areas that have not. The idea is to give places like Indianapolis, Memphis, Southaven, Mississippi, or the Bronx not only a chance, but an advantage against projects located in Los Angeles, Manhattan's West Side, and Miami.

The advocates for those who seek to have the status quo maintained, either currently or under new rules by another name, suggest that sticking to the policy premise would be the death knell of the program. Nothing could be further from the truth. The issue is about whether we can address these changes and for the betterment of the entire program.

It is very much likened to the automakers when first seatbelts and then airbags were mandated. They cried, they said it would be impossible detriment on the industry, and then market simply adjusted. So too will the EB-5 market adjust to proper and reasonable changes to the TEA rules and regulations. It should not be about maximizing the number of projects that qualify for the benefit, but maximizing the benefit for the communities that are supposed to get it.

If we get this right, then maybe some of the regional centers who support the current rules and invest in wealthy areas will instead focus their energies and effort in Indianapolis, Memphis, and the Bronx. That would be truly something.

In the end the question is simple: if Congress wishes to maximize the social impact of the program, then it must provide an incentive for both investors and sponsors to create jobs in truly economically distressed areas. This incentive can take the form of either a materially reduced investment amount or segregating visas for investors in true TEAs.

Thank you for the time. And I am happy to answer questions that the Committee might have.

[The prepared statement of Mr. Gordon follows:]

Is the Investor Visa Program an Underperforming Asset?

United States House of Representatives Judiciary Committee

February 11, 2016

2141 Rayburn House Office Building

Washington, DC

Written Testimony of Matt Gordon

Chief Executive Officer, E3 Investment Group

Chairman Goodlatte, Ranking Member Conyers and other members of the committee, thank you for allowing me testify on this important topic.

Introduction

My name is Matt Gordon and I am Chief Executive Officer of E3 Investment Group. E3 Investment Group is a New York City based 21st century private equity firm whose mission is the harmonious synthesis of economic and social value creation. E3's mandates - "The three E's" are: Employment – to create well-paying permanent jobs; The Environment – to conduct our operations in a manner that minimizes our negative impact in the industries in which we focus and maximizes the positive social value creation in the communities of which we are a part; and Earnings – so we can ultimately do well for our investors, ourselves and for the communities in which we operate. We focus exclusively on the 'direct' side of the EB-5 program as all of our investors' capital creates more than ten jobs each, so there is no need for us to utilize the econometric labor creation calculation afforded to regional centers. E3 Investment Group's flagship, of which I am Chairman, is E3 Cargo, an Indianapolis, Indiana based trucking company that receives 100% of its equity financing from EB-5 investors. We are in the process of expanding to Southaven, Mississippi.

I am also one of the founding members of the More American Jobs Alliance, or MAJA. MAJA's constitutional principle is to maximize the social impact and societal value for America from the jobs created by virtue of the EB-5 Immigrant Investor Program. MAJA advocates a re-focusing of the EB-5 program on the creation of actual jobs for American workers and in particular the creation of jobs in true economically distressed and rural areas. MAJA also believes that enhanced investor integrity and national security measures are needed for the long term health and viability of the program.

By way of background, I was born raised and educated in New York State and I earned my undergraduate degree in Economics and Policy Analysis from Cornell University. I earned my law degree from the University of Pennsylvania School of Law. I live in Westchester County, NY and E3 Investment Group's headquarters is in Manhattan, New York.

I began my career as a wall street corporate lawyer and then went on to run the US division of a Swiss Telecommunications company before becoming an investment banker and management consultant. Since coming into the EB-5 program I have done a significant amount of policy and academic work. I am the editor of the EB-5 legal treatise entitled, "The EB-5 Book". In 2014, I helped the lead researchers of Initiative for a Competitive Inner City with their work related to using EB-5 capital for distressed urban communities. This work culminated in an EB-5 policy forum held at the Harvard Kennedy School of Government at which they released a white paper that featured E3 Cargo.[1] I also participated in a White House sponsored policy forum on the JOBS Act, as EB-5 is the original form of crowd funding.

Three years ago, after an increasing volume of inquiries from overseas investment banking clients about EB-5, I started looking at the program. I made several immediate observations. Firstly, it was an odd

[1] A copy of the White Paper presented at the event held at the Kennedy School on July 1, 2014 entitled, *Increasing Economic Opportunity In Distressed Urban Communities* by Kim Zeuli and Brian Hull, can be found at the following link: http://www.icic.org/ee_uploads/publications/ICIC_EB5Impact_Report.pdf (and is included herewith). The paper features several EB-5 projects that create jobs in distressed urban areas.

little part of the capital markets with 95% of all the capital was flowing into a single asset class, namely real-estate. Secondly, the way the deals were structured were pretty bad for investors. Finally, the program didn't seem to be doing a very good job delivering on its policy premise of job creation, especially in light of the way targeted employment areas (TEAs) were being manipulated.

I saw an opportunity to build a much better mousetrap where we could achieve market share by offering something that was designed with investors' interests at the forefront. At the same time, I saw a pathway to achieve the level of social impact investing without making sacrifices to achieve both social ends and profits. At the beginning, I was agnostic to sector. Everyone else had their project and wanted to jam EB-5 capital into it. We started from the premise that the program could afford us the opportunity to generate a tremendous amount of positive social impact, while simultaneously generating a large amount of wealth. We underwrote a variety of sectors and arrived at trucking as the best. $500,000 finances 10 trucks, which means 10 truck drivers. Trucking companies naturally are located in economically distressed areas. E3 Cargo is located in Marion County Indiana, which is entirely a TEA, as is the single census track in which the office sits. Our new office in Southaven, Mississippi also sits in a single census tract TEA. No gerrymandering is needed. Our thesis was if it was better for investors we could create a win-win and carve out our niche. We also believe that it is important to fulfil the spirit of the policy intent and the law, by maximizing social value from our efforts, even if the laws and regulations would allow otherwise.

I am here before you because I am Wall Street and I am Main Street. I am urban center and I am the rural community. I am here to help get the EB-5 program back to its policy roots, as I fully and passionately believe that the EB-5 program has the potential to be the crown jewel of American Immigration policy. Immigration has always been a central theme in my life, and all our lives. My guess is that most people, if not everyone in attendance today, hails from a family that at one point crossed our border as an immigrant. My wife lived the American dream, coming to America 25 years ago with $50 in her pocket and today she is a partner in a major national law firm. Together, we have walked the path of the immigrant. I know the fear of sitting across from an immigration officer, with our family's fate in their hands, with all our hopes, our desires, our dreams, hanging in the balance. I am continually inspired by those who seek lawful permanent residence through the EB-5 program. They can choose among dozens of other countries' immigration programs. They are often talented and accomplished in their businesses and careers. We are fortunate to have among the world's best and brightest as new immigrants who choose live and work among us, helping renew and rebuild our great nation as generations of immigrants have before them.

Is the Investor Visa Program an Underperforming Asset?

The apt title of this hearing questions whether the EB-5 program is underperforming. The answer is unfortunately a resounding yes. The EB-5 program consistently fails to maximize the social value created for the green cards that our country is investing in the process. Congress had the wisdom to create the 5th employment based immigration preference as part of the Immigration Act of 1990. The policy basis was to motivate immigrant investors to invest capital in the United States in order to create jobs. For this social benefit, America, in return, granted these investors lawful permanent residency, commonly known as green cards. The goal of the program is not to enrich real estate sponsors or others, like myself, who use EB-5 as a capital formation vehicle for their businesses. That is a pleasant by-product, but it should never be seen as the goal or something worthy of protecting or perpetuating for its own sake. The goal of

the program is to create jobs for US workers. An important part of the program was the creation of the policy behind 'targeted employment areas' or TEAs. TEAs are supposed to turbo-charge the social benefit created by the resulting job creation by focusing the activity in economically distressed areas. Simply put, job creation in economically distressed areas is more valuable to our society. The mechanism to incentivize this behavior was to lower the needed investment threshold from $1 million to $500,000 for EB-5 based investments that are located in a TEA.

TEA policy has been a failure, because it is not only possible but relatively easy to get any location in America designated as a TEA. Absent a few notable exceptions, including, for example, our urban-based E3 Cargo, CP Homes, which is developing an assisted living facility for senior citizens in Athens, Texas, a rural community of 13,000 people, and the rural-based Ligtt Regional Center that is developing a critical piece of national infrastructure, the vast majority of all TEA qualified projects are not located in distressed urban areas or rural communities. Despite the policy goal of wanting to help distressed urban and rural communities who desperately need the additional investment capital, virtually all EB-5 capital goes to prosperous wealthy areas. Increasingly, the market is becoming dominated by mega-projects located in the most affluent areas, such as the Hudson Yards project in Manhattan, NY. The root of the issue is the States' ability to define the geographical contours of a TEA, with USCIS only able to verify the unemployment calculations, but not challenge the overall bounds. Generally, States quickly learned to be as permissive as possible in an attempt to attract ever greater amounts of EB-5 capital.

Senator Leahy's statement from the Senate Judiciary Committee Meeting on February 2nd, 2016, summarizes the point succinctly:

> **I am particularly troubled by the opposition to reform of the Targeted Employment Areas. Their abuse undermines a core objective of the EB-5 Regional Center Program—to spur growth and create jobs in underserved areas where investment capital and jobs are often scarce. I do not suggest that affluent areas should not benefit from EB-5. They should. But they should not qualify as distressed areas. In many cases, these projects would be pursued regardless of EB-5, calling into question whether the EB-5 capital is creating any jobs at all.**

To be clear, I am not an enemy of regional centers. I believe there are many contexts where the econometric calculus of indirect and induced job creation is needed to fairly account of the benefit produced by the economic activity. There are some genuine questions over whether accepted input-output econometric models used by Regional Centers and accepted by USCIS in fact predict the kind of long term structural (value maximizing) employment envisioned by the policy behind the EB-5 program. That is a matter of important, but technical nuance. Hopefully, as Regional Center reauthorization is contemplated, that topic can be more thoroughly investigated. What is clear and undeniable is that the way TEAs are administered by USCIS is broken.

There are those who believe that TEAs are working fine. Their argument is premised on a labor mobility model to support the idea that TEAs are fulfilling their policy objective if the project (built in a low unemployment area) draws workers who live in high unemployment areas. To frame the debate, its either about helping the area or the people who may or may not come into the area to work. I will submit, that a geographically anchored framework must be the determinative factor. Structural investment in an area has the premise to effect structural economic change to that area and its population. Look at Times Square in New York. In the 1980's it was a dangerous place. I would avoid it during the day, let alone at

night. Today, it is a vibrant and safe community. What it took was development capital in the area, operating business in the area. Back in the 1980s, if all the money were allocated based on labor mobility models advocated by some for TEA determination in the name of compromise, none of the money would have made it to Times Square. The money would have gone to the existing fancy neighborhoods in Manhattan, and the workers, who travelled there, maybe from Times Square where they lived, would have probably moved out as soon as they could have afforded it. Labor is always mobile, areas are not.

A TEA is a targeted area and so it should remain. Some frame the debate as Urban vs. Rural. I submit that it is really about helping the geographical areas that have as opposed to the areas that have-not. If the idea is to give places like Indianapolis, Memphis, Southaven and the Bronx not only a chance but an advantage in competing against projects located in LA, Manhattan's West side and Miami for job creating EB-5 dollars. There is no question that most investors want to invest in prime real estate projects in America's leading cities. For those of us focusing our efforts in cities, towns and rural communities that have fallen on hard times, our job is much harder. The overwhelming majority of all potential investors with whom I interact turn me down very early in the process precisely because we are not the tallest building in the richest neighborhood. The advocates for regional centers suggest that sticking to the policy premise would be the death knell of the program. Nothing could be further from the truth. If congress adopts a definition of TEA consistent with the original policy intent, it would look something like a single census tract (or a very small cluster or tracts around one[2]), or recognized political area of organization (town, township, village, county, borough or city) that has more than 150% of the national unemployment rate or any rural area.

There would be a proportion of projects that would continue to qualify for the lower investment rate. Others, in prime non-distressed areas would have to raise capital at higher price. The vast majority of investors with whom I and other EB-5 sponsors interact have significant assets, well beyond what is needed to support an investment at $1 million or $1.2 million. If you took all the projects that currently operate in truly economically distressed areas, it would undoubtedly account for far less than 10% of the EB-5 capital inflows. For the price sensitive investors, these projects would fully capitalize leaving the rest with only projects that offer investments at the higher investment threshold. The regional centers are just like the auto makers who cried when seat belts and then airbags were mandated. The market simply adjusted. So too will the EB-5 market adjust and in all likelihood in a manner that is consistent with the policy goal to maximize the impact on the communities that need it, rather than maximizing the number of projects that qualify for the benefit. If we get this right, maybe some of the regional centers will give Indy, Memphis and the Bronx a second look and some of their time, effort and capital will flow there. Wouldn't that be something!

In S. 1501 and the various drafts that were negotiated during December, several different approaches to TEAs were explored and structured. According to a very thorough analysis prepared by NYU Professor

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[2] The use of census tracts as the relevant political geographical is highly expedient as the needed unemployment data is readily available, but somewhat random as tracts often have no real relationship to the boundaries of communities and populations in which they sit. Marion County Indianapolis is a perfect example as there are locations, all of which are essential in the same industrial based area, that sit in one tract that is high unemployment as opposed to an immediately contiguous tract, which is not high unemployment by a small margin. Accordingly, allowing a small clustering of tracts around a high unemployment tract can help a TEA more accurately reflect the geographical boundaries of the community compared to a single tract approach.

Jeanne Calderon and Scholar-in-Residence Gary Friedland[3], each of the new approaches to TEAs would have had the effect of reducing the number of projects that qualified for the reduced investment rate. Of course, this is precisely the point. To change the rules to simply allow non-economically distressed areas to qualify as TEAs would simple subvert the policy goals by another name and reduce the potential positive social impact from the EB-5 program.

In the end, the question is simple. If Congress wishes to maximize the social impact of the EB-5 program, then it must provide for an incentive for both investors and sponsors to create jobs in truly economically distressed areas. This incentive can take the form of a material reduced investment amount, and/or, it can take the form of segregating a number of visas for investors in 'true' TEAs. The later approach would have the effect of significantly reducing the time it takes for mainland Chinese born investor to receive their lawful permanent residence in the current retrogression environment.[4]

Related areas with respect to future legislative changes in the EB-5 program

An important topic to keep in mind with respect to any changes to current EB-5 law or regulations is the issue of retroactivity and its alter ego – grandfathering. The EB-5 program, while a pathway to immigration is an investment program. While there is some precedence for retroactive changes to rules in the immigration context, such actions with respect to investors should be undertaken very carefully. In an investment program of a modern economic system, in particularly the leading economic system of the world, the rules of the game are typically considered immutable post-facto. During the run up to the expected changes in December, Investors filed I-526 petitions in tremendous numbers. This has the potential to create a significant backlog for issuing visas, especially in China, for years to come. A retroactive effective date for investor I-526 filings to earlier in 2015 may have the effect of fixing that problem, only to then cause investors everywhere to lose confidence in the entire program itself. Who in the future might be willing to commit $500,000 or more, for at least 4 to 5 years, and move one's family, only to face the risk that the rules can be changed at a future point rendering the past actions meaningless? Congress is now faced with the hard decision between reducing the visa backlog via retroactive rules or maintaining investor confidence in the system albeit one with long delays for those from China.

It is important to note that the any protections should be thought of in the context of investor protection, not sponsor protection. If Congress, in the new law, allows recent filers to benefit from the rules prior to the passage of the next law, Projects or sponsors should not be given similar deference. In the months leading up to December's flurry of attempted legislative action, a huge number of Regional Centers filed exemplars hoping that previously proposed grandfathering provisions[5] would insulate them from coming reform. If projects are grandfathered, it would effectively delay for years the effectiveness of any reforms. Many project sponsors complain that if they are not grandfathered they would be cut off from EB-5 funds mid-stream, which could imperil current investors. I believe there is a critical distinction between a project related risk, which all investors accept, and a risk of post-facto changing the system, which they do not.

[3] "What TEA Projects Might Look Like Under EB-5 2.0: Alternatives Illustrated with Maps and Data", Working Draft, latest revision dated January 25, 2016, is available at http://www.stern.nyu.edu/sites/default/files/assets/documents/What-TEA-Projects-Might-Look-Like-under-EB5-2.0-Alternatives-with-Maps-and-Data_0.pdf

[4] Congress can also consider mandating a faster processing time for those investing in TEAs, regardless of the investors' national origin.

[5] See Senate Bill S. 1501 introduced by Senators Grassley and Leahy.

Another topic is the proposed integrity measures, which are a series of national security and investor protection measures, that were included in S. 1501, the various drafts from December, and to a lesser extent in the stand alone legislation proposed by Senators Flake, Cornyn and Schumer.[6] Strong integrity measures are essential for the long-term viability of the EB-5 program. As an investment program, albeit a unique one, instilling a bedrock of confidence in the marketplace is a basic predicate for the proper functioning of the market. To maximize the value of the EB-5 program as a nation asset, the integrity of the marketplace must be sacrosanct. As an immigration vehicle, it is also critical to ensure that the EB-5 program cannot be used by foreign governments in any way that may subvert our national interests, otherwise, the economic value of the EB-5 program, whether maximized or not, will be irrelevant.

[6] S.2415: EB-5 Integrity Act of 2015

Mr. GOODLATTE. Thank you, Mr. Gordon.

We will now begin the questioning of the witnesses under the 5-minute rule, and I'll begin by recognizing myself.

Mr. Colucci, USCIS has reported that, from program inception through 2014, the EB-5 program has created a minimum 73,730 jobs and more than $11.2 billion in investments. How many more jobs and investment funds could the program have created if the minimum investment amounts had been indexed for inflation?

Mr. COLUCCI. Chairman, that is not a statistic that I have personally calculated, nor have my staff members calculated. However, as outlined in the Secretary's letter to this Committee, that is a legislative enhancement we currently seek, is to increase the minimum investment amount. And as also mentioned in that letter, if that is not something Congress is able to do, we are prepared and we are working to increase this amount through regulation.

Mr. GOODLATTE. Well, as far as back as 1987, the INS recommended that the minimum investment amount in an investor visa program be adjusted periodically based on some criteria, such as the Consumer Price Index. And I am pleased that Secretary Johnson has indicated that USCIS intends to exercise its authority. Do you intend to fully recapture the value lost to inflation over the past quarter century?

Mr. COLUCCI. I think, sir, that we still need to study exactly where we set or propose to set those investment amounts. I do think that we would certainly look at what Congress did as part of a number of the bills that address this area.

Mr. GOODLATTE. In instances where a capital development project is financed by a combination of EB-5 and conventional capital, DHS currently allows foreign investors to claim credit for jobs created by other people's money. The DHS inspector general revealed one instance in which EB-5 investments accounted for 18 percent of the project's equity and yet the foreign investors took credit for all the jobs the project created. Doesn't this make a mockery of the Investor Visa Program's job-creation goal?

Mr. COLUCCI. Sir, as you pointed out in your opening statement, this is something through our regulation that we do allow, EB-5 investors to take job-creation credit from non-EB-5 sources. We recently did some analysis and found that, without that, there would be about 160 industries that would not qualify for EB-5 funding because they could not create those jobs on their own.

I would also say the reverse is true. There are many projects that are solely EB-5 funded, in addition to projects that—a "but for" scenario, in which we see lending letters from commercial financial institutions which state: We will not loan this money unless you go out and get that EB-5 financing.

Mr. GOODLATTE. Mr. Colucci, I understand your argument, but doesn't that again simply reflect the fact that the DHS has never adjusted the minimum investment levels for inflation? If you had done so, wouldn't the number of jobs created by investments in all the industries you just referenced have increased commensurately?

Mr. COLUCCI. Sir, that is correct. If we did——

Mr. GOODLATTE. I have a number of other questions, so let me keep moving.

Seventeen thousand six hundred ans sixty-two aliens with approved investor visa petitions, including their spouses and minor children, are waiting for visas to become available right now as we sit here, and you have on hand 21,855 pending petitions. When you factor in accompanying family members, if any reforms to the EB-5 program only applied to prospectively filed petitions, such reforms would not actually take effect for over 7 years. Can such a delay be considered real reform?

Mr. COLUCCI. Sir, those statistics you cite are accurate. We do indeed have approximately 21,000——

Mr. GOODLATTE. And an average of three green cards per petition, correct? So that's over 63,000 pending green cards. At 10,000 per year, we are getting over 6—closer to 7 years of backlog. And under those circumstances, if we only make reforms prospective in nature, those reforms won't take place for 7 years. The program has generally not been authorized for as long as 7 years. So how are they meaningful reforms if they don't take effect for that long a period of time?

Mr. COLUCCI. Sir, you're correct, any regulations that we would implement would likely be forward-facing or prospective increases.

Mr. GOODLATTE. But for them to be effective, they would have to have some retroactivity if they are going to take effect in any way, shape, or form before 7 years from now.

Mr. COLUCCI. Sir, I know that in some of the bills that were introduced there were provisions to increase additional fees for the petitions, the actual—the 526, the immigrant investor petition, and the removal of condition petitions that would add to the costs that are taken in by the United States Government.

Mr. GOODLATTE. Let me turn to Ms. Calderon. Thank you, Mr. Colucci.

You've written that gerrymandering has rendered the two-level investment threshold meaningless, and immigrants flocked to invest in luxury projects by major developers, and we gave some examples up here. Is this consistent with the intent of Congress to incentivize investments in rural and depressed urban areas?

Ms. CALDERON. Thank you. And that's actually why I mentioned the legislative history in the 5-minute presentation, that no, it's not at all consistent with the two-tier system.

The legislation that was first introduced had one tier, 1 million, it was only later that the two-tier system was introduced by Senators Boschwitz and Gramm, and they made clear throughout the Congressional Record that we found that the discounted amount was aimed at rural as well as depressed or inner cities.

Mr. GOODLATTE. The intent was to get a higher amount for those investments in areas that didn't qualify for rural or depressed urban areas.

Ms. CALDERON. Yes. And apparently, I mean, the belief was that most investors would be investing at $1 million in 1990.

Mr. GOODLATTE. Right. You write that if Congress seeks to incentivize development in areas which encounter difficulty in attracting the investment capital needed for economic growth, the commuter pattern construct would not be an appropriate way to designate a TEA. Could you elaborate briefly on that?

Ms. CALDERON. It's a takeoff on the fact that regional centers, unlike Matt Gordon's company, uses econometric models, basically is basing the job count not on direct jobs, but on the indirect and induced jobs. So there's really no way of proving where the workers are coming from. He points out that the jobs may not be reflective of long-term jobs. We don't know the location of their residences as well.

Mr. GOODLATTE. Thank you.

And lastly, Mr. Gordon, do you believe that the EB-5 program reforms that I drafted last year, along with Mr. Conyers, Mr. Issa, Ms. Lofgren, and Senators Grassley and Leahy, would have corrected the abuses that have cropped up in the Investor Visa Program? And do you think these reforms would make the program unattractive to developers or foreign investors?

Mr. GORDON. I think that the draft bills—and there are many versions of them, so I started losing track of which parts we were at which points—but I do think that they went a long way, and also as part of the compromise negotiations that were taking place in December, to correct the ills of the program.

Mr. GOODLATTE. With 63,000 people in the pipeline, 21,000-plus petitions, would they have scared off investors?

Mr. GORDON. To some degree it might have. And remember, that pipeline really is a problem when you're talking about investors from China, because due to the restrictions and the quotas for investors from each country, it wouldn't actually affect investors coming from outside of China at all.

Mr. GOODLATTE. Yeah, but 87 percent are from China. Is that not correct?

Mr. GORDON. Yeah, that's correct.

Mr. GOODLATTE. Right.

Mr. GORDON. So again, markets tend to normalize, and as people——

Mr. GOODLATTE. Normalize at a higher level of investment in areas that might be more targeted to rural and high unemployment areas.

Mr. GORDON. Sponsors would react to the incentive structure. So if it was in their best interest to focus on nonprime real estate locations, if it was in their interest to do so, they would look for other opportunities.

And likewise, they would also look for investors from locations where there might not be such a nonprice issue related to getting them to come on board. So maybe they'll focus on other areas of the world than simply China.

Mr. GOODLATTE. Thank you.

The Chair recognizes the gentleman from Michigan, Mr. Conyers, for his questions.

Mr. CONYERS. Thank you, Chairman Goodlatte. And I appreciate the testimony, the varied testimony from our four witnesses.

I'd like to begin by asking unanimous consent to include in the record the testimony of Nancy Zirkin, who is the vice president of the Leadership Conference on Civil Rights. May I?*

Mr. GOODLATTE. Without objection, it will be made a part of the record.

Mr. CONYERS. Right. And the second statement I'd like to have included in the record is one from the AFL-CIO concerning this Investor Visa Program. I'd also like that included in the record, please.*

Mr. GOODLATTE. Without objection, that will also be made a part of the record.

Mr. CONYERS. I thank you very much.

Now, we have a situation here where, Mr. Colucci, The Wall Street Journal estimates that 80 percent of all EB-5 projects need gerrymandering to qualify as high unemployment targeted employment areas. With respect to the reform of targeted employment areas, who has the authority to ensure that the gerrymandering is appropriate or should not be allowed, in your view?

Mr. COLUCCI. Sir, through our regulation we allow the States—the States are the ones who put together targeted employment areas. And then through a policy memorandum, not only do we defer that to the States, but we indicate that we will look at their methodology. In other words, we will ensure that the area that they designated does indeed meet the 150 percent unemployment rate.

Mr. CONYERS. And let me ask you this additional concern. What can the Department do to ensure meaningful incentives to invest in distressed areas, as we in the Congress wanted to by enacting this legislation in the first place?

Mr. COLUCCI. Sir, as the Secretary indicated in his letter to the Committee, targeted employment areas are an area in which we were seeking a legislative enhancement. And short of that, as he also indicated, this is something that we can address through a regulatory solution that would go out for notice and comment to the public like any other regulatory solution. So we do have the power to define how targeted employment areas are put together.

Mr. CONYERS. Turning to Matt Gordon. Some EB-5 investors claim that they won't invest in projects outside traditional gateway cities because they believe those projects are safer and more likely to create jobs needed to support their visa applications.

What do you think must be done to targeted employment areas to direct or drive investment to more economically distressed areas?

Mr. GORDON. Thank you. That's an excellent question.

It's supposed to be an economic incentive tool. For it to have any power or meaning, there needs to be a difference in the pricing. So targeted employment areas that are outside of the gateway cities need to have an investment amount that is materially lower than those in the gateway cities.

There will always be those who want to live in prime areas and will be willing to pay the premium, and so too there will always be those who are only interested in investing in prime areas, and they too will be willing to pay the premium.

Mr. CONYERS. How do we know? Let's go to Ms. Calderon. How do we know if the jobs created are good jobs that pay a living wage?

***Note:** The material referred to is not printed in this hearing record but is on file with the Committee. Also, see Conyers Submissions at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104454.

Ms. CALDERON. We don't. We don't know that. Again, because most of the investors are investing indirectly through a regional center structure and because the regional center structure is used, the job count is not based on direct jobs but, instead, on indirect and induced jobs.

And the way to measure those we use economic models. We don't count W-2s. We don't check where the people are coming from, and we don't check the length of the employment or the type of employment.

Mr. CONYERS. Who should do this checking, and how do we correct that?

Ms. CALDERON. USCIS could set out the standards for the States to apply if, again, the standards were objective and uniform, unambiguous. But I would think that it would be better for USCIS, in its D.C. national office, to take over that role.

Mr. CONYERS. As I conclude, does anyone else want to add anything to their views to this question that I've asked?

Mr. GORDON. I would just supplement that it's a challenge under the current econometric models to actually gather this type of data. They're not really the right tool for the question that you ask. It's very different on the direct side of the program. I mean, we can tell you worker for worker by what they make, how long they work, and how their wages compare to national averages. That's very, very easy.

But when you're using the type of input/output econometric models that's currently accepted for regional center job protection, it's going to be a difficult task. It might require a totally new type of accepted methodology.

Mr. CONYERS. Well, thank you, Mr. Gordon.

And thank you, Mr. Colucci.

Mr. ISSA. Mr. Chairman, I have a unanimous consent.

Mr. GOODLATTE. Yes. The gentleman is recognized.

Mr. ISSA. Mr. Chairman, I ask unanimous consent—because it's going to be needed—that the GAO report the gentlelady put in be put in the record from August 2015 entitled, "Additional Actions Needed to Better Assess Fraud Risk and Report Economic Benefits."**

Mr. GOODLATTE. Without objection, it will be made a part of the record.

Mr. ISSA. Additionally, I have a unanimous consent that an editorial published in Roll Call by Senator Dianne Feinstein entitled "U.S. Citizenship Should Not Be for Sale" be placed in the record.***

Mr. GOODLATTE. Without objection, it will be made part of the record.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. GOODLATTE. And I would ask unanimous consent that a letter to myself and Ranking Member Conyers from IIUSA, Invest In

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**__Note:__ The GAO Report referred to is not printed in this hearing record but is on file with the Committee. Also, see:

http://www.gao.gov/assets/680/671940.pdf.

***__Note:__ The material referred to is not printed in this hearing record but is on file with the Committee. Also, see:

http://blogs.rollcall.com/beltway-insiders/u-s-citizenship-not-sale-commentary.

the USA, if you will, dated February 10, 2016, be made part of the record.****

Mr. GOODLATTE. And, without objection, it will be made.

And the Chair now recognizes the gentleman from California, Mr. Issa, for his questions for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

And I want to thank all of you for being here.

Ms. Gambler, I want to thank you for your report. I think it's insightful. I also appreciate the fact that all of you seem to have followed our attempts, albeit at least temporarily in vain, to reform EB-5.

Mr. Colucci, I'm going to apologize in advance that you're the person in the hot seat, but let's go through a couple of things that I think need to be on the record.

First of all, you're saying that you can do regulatory reform to fix many of the ills pointed out by the GAO's report last year, right? Is that correct?

Mr. COLUCCI. Yes, sir, there are reforms——

Mr. ISSA. Okay. And, to date, you have not put any out for public comment. Is that correct?

Mr. COLUCCI. We have not, sir. We were working on a regulatory reform in 2014, and when Congress signaled its intent to pass a comprehensive bill with respect to EB-5, we moderated our efforts in 2015. However, now that the bill did not pass, we are reengaged on our efforts.

Mr. ISSA. So let's go through this. 1990, there was regulatory authority to fix some of these things. Nothing happened. That was George Herbert Walker Bush. So then he left. President Clinton got 8 years. He didn't do anything. He left. George W. came in. He had 8 years. He didn't do anything. Now we are in the 8th year of President Obama, and you're saying that because we thought we were going to fix something you stalled.

Well, let's go through some of these things. And, again, I apologize in advance, but you saw the Chairman's 200-mile long farce of a gerrymandering with no possibility that people were actually going to go 200 miles to a job. And you allowed it because, if I understand correctly, you feel you don't have the authority to fix that, to deny it. Is that correct?

Mr. COLUCCI. I'd like to make two comments: We did actually pass a regulation with respect to the regional center program in the 1990's, and I believe it was 1993; with respect to that particular slide that was shown that indicated that 200-mile targeted——

Mr. ISSA. Well, whether it's that or the up the Hudson River one, they're both pretty egregious. Wouldn't you agree?

Mr. COLUCCI. Well, the one in particular in Texas, we are not able to find that that was officially submitted by a petitioner for a targeted employment area. We are continuing to look, but we have not located that.

With respect to the one that was shown for New York, you know, what I would point out is they are all contiguous census tracts.

****Note: The material referred to is not printed in this hearing record but is on file with the Committee. Also, see Goodlatte Submission at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104454.

What I don't think was shown there is there actually are census tracts that border the river and some land——

Mr. ISSA. But that's not the question. The question is, isn't it obvious that the discount that was in the legislation before some voters were born, that will be voting in this election, the legislation intended to discount for the enhancement of employment. And if they include census tracts in which the employment is unlikely to come from there, then, in fact, they're just throwing it in when—you know, and let's just be honest. People do not come 100 miles to a job. Isn't that correct?

So you had the ability to—and correct me if I'm wrong. Did you have the ability to deny them if you felt that they were including areas which would not have led to employment, but they were scoring the employment? Yes or no, please. Do you have the authority to deny?

Mr. COLUCCI. If an area that has been designated by a State is a geographic area traditionally within a metropolitan statistical area, we do not have the authority to deny.

Mr. ISSA. Okay. So you don't have the authority, which means you do need congressional action to fix that?

Mr. COLUCCI. Well, sir, what we can do is define targeted employment area within our regulations. But as the Secretary noted in his letter, we did recommend some sort of a legislative enhancement in this area.

Mr. ISSA. Okay. And for all those years I mentioned, there has been no increase in the amount necessary. I might note that Singapore is $2 million. It's about $1.5 million for Britain, and yet we're half a million dollars.

Mr. Gordon, let me the just ask you a question. I'll try to get it very simple. If Congress determined that the original intent of this was job creation based on real investment in permanent jobs, wouldn't it be reasonable to stop loaning a minority amount of money to help real estate be built that creates temporary jobs, often simply rebuilding a hotel?

Mr. GORDON. Generally, yes.

Mr. ISSA. Okay.

And Mr. Colucci, my final question, I suspect, is going to be, you know, I hear you saying that you don't have the authority, but are you really telling the American people that if only 1 percent of the jobs came from money on an EB-5, that they still would be entitled to count 100 percent of the jobs?

In other words, if $500,000 came in out of $500 million, the $500 million, all from other sources, should be able to count toward the job creation. You told me that you didn't see something wrong with that, and I believe you said you didn't see something wrong because many programs wouldn't qualify without using the non-EB-5 money. Is that what you're telling us, that we should put up with considering all the jobs created, including the ones that have nothing to do with the so-called investor?

Mr. COLUCCI. Sir, what I did point out is that our regulations do indeed allow it, and there are about 160 industries that would not be able to participate in the EB-5 program——

Mr. ISSA. Because they don't create enough jobs with the investment money.

Mr. COLUCCI [continuing]. Because they don't create enough jobs.

Mr. ISSA. And the Congress intended the investment money to create a certain amount of jobs, and they don't do it. So what you're saying is you believe the rules have to be stretched to allow for creation beyond what is actually created by the investment.

Mr. GOODLATTE. The time of the gentleman has expired, but the gentleman is welcome to answer the question briefly.

Mr. COLUCCI. I would just say, sir, that is allowed through our regulation and that was after a significant notice and comment period in, again, as I mentioned, the 1990's.

Mr. ISSA. Mr. Chairman, I'll note that during that notice and comment, I wasn't a Member, but I am now. And I disagree with that ruling.

Mr. GOODLATTE. And the Chair shares your concern.

The Chair recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

Just a couple of comments. I listened carefully to my colleague from California, and, you know, I think it needs to be pointed out that Congress has reauthorized the EB-5 program numerous times, both with Republican and Democratic Presidents, with Republican and Democratic majorities in the House and Senate. So, you know, it isn't until this day that we've actually had the kind of substantive hearing that I think we clearly need.

And part of the reason for that is that this was a program that was kind of quiescent. It never hit the 10,000 visa mark. It was not really a very active thing until the financial crisis hit, and now it's a live matter. And I think it's good that we're examining, how is this meeting the goals that we had for development, for job creation, economic development in our country?

And unlike so many other elements of our immigration law, the focus isn't on the immigrant. It's on the investment. And that's why I'm so glad that we're here. You know, as we were working through how to structure this, you know, if your focus is on immigration, it doesn't mean that you know economic development and what is the right way to approach that.

I would note that California has, I think, really led the way in trying to not abuse this program by adopting the twelve census tract rule. That may not be perfect, but I think it's a start. And I give them credit for trying to make sure that the investments went where they are needed, and that may be something that we may want to look at for this next reauthorization, understanding that we're going to, I think, continue to look at this.

You know, I was very interested, Ms. Calderon, in your testimony. I really had never thought about the visa reserve issue. When you're oversubscribed, the issue—I mean, these are people who want to get permanent residency in the United States. And I was interested in your comment, Mr. Gordon. They don't have to live where they invest. I mean, you know, they get to live anywhere in the United States. It's just, do they get the visa? Is this really going to create jobs?

And I'm wondering, since our two-tier investment didn't really produce the result we wanted in terms of investing in disadvantaged communities, maybe we just do visa—put the backlog people

without regard to origin, maybe throw out the per-country limits, and say it's going to be $2 million apiece. But if you go into a rural disadvantaged area or an urban disadvantaged area, you go to the top of the backlog. Do you think that would work, Ms. Calderon or Mr. Gordon?

Ms. CALDERON. I think that it would certainly help, because, obviously, the immigrant is investing to obtain the visa——

Ms. LOFGREN. Right.

Ms. CALDERON [continuing]. And to obtain the visa in the fastest time possible and to hopefully receive back his investment in as short a time as possible.

Ms. LOFGREN. Right. But if you're the investor and you're looking at, I could be in this line for 10 or 15 years and have a guaranteed visa, or I can take a higher level of risk, but next year, my family and I can get to where we want to go, that's a balancing act, but maybe time does matter for these people.

Ms. CALDERON. I certainly agree—in our research, we're not out in the field. So I have no idea if, in fact—and there probably will be some immigrants who won't be able to afford, won't be able to obtain the funds necessary to——

Ms. LOFGREN. But that's really not our question.

Ms. CALDERON. Exactly.

Ms. LOFGREN. So provided there are an adequate number of investors, we don't care if everybody qualifies. What we care about is their investment being made, right?

So I guess that goes to the next question, which is if we were to raise the dollar amount to where it would be through inflation or similar to Singapore or some other countries to $2 million, say, or $1.5 million even, do you think that we would have sufficient investment interests for the great benefit of getting a permanent residence in the United States?

Ms. CALDERON. Being, again, that we are not out in the field——

Ms. LOFGREN. Right.

Ms. CALDERON. [continuing]. I don't have any practical experience. It sure seems that, at least based on the mainland Chinese immigrants' interest in the United States, that it would continue.

Ms. LOFGREN. Finally, and I don't know that you can answer this, but I would recommend to the Committee that we have some more exploration of this. We have treated all investments and all job creation as identical basically. And I don't know that that is the right approach. We have the capacity to identify a menu of investments that provide the most benefit for the United States.

For example, in rural areas, it might be certain kinds of agriculture that provide persistence employment. In inner cities, it might not be a construction project; it might be a small manufacturing project that would provide.

So I'm wondering if you or some of the other academics that you associate with have the capacity to provide bang-for-buck information to the Committee as we think about what kind of guidance we want to provide to investors in this program.

Ms. CALDERON. It certainly seems that the easiest type of project to receive incentivization regardless of its geographic location would be public infrastructure projects. If anything-with the increase in real estate development, if EB-5 funds it or otherwise,

that obviously puts more of a burden on the roads, the infrastructure.

From our analysis of the drafts last December, it appears that that would not be controversial, that you're all on board for that.

Ms. LOFGREN. I see that my time is expiring, and I'll stop as a consequence.

But, Mr. Chairman, I hope that we can engage either in a public hearing or in some small group settings open to the public some further discussion on the kind of investments we might want to incentivize that would provide lasting value to the country.

And, with that, I yield back.

Mr. ISSA [presiding]. And I thank the gentlelady. I've had no better partner as we've tried to reform this than you, Ms. Lofgren.

And, with that, we go to the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

And I appreciate you guys being here today.

You know, just this month, this Administration has seen to the release of $100 billion for Iran's use, the largest supporter of terrorism. They had given us fair warning that they were going to increase their spending on Hamas and Hezbollah with this huge amount of money we're going to get.

Are there any assurances that if Iran decided to come into the U.S. and invest that money in the United States, that they would not get an EB-5 visa and be able to buy strategic land in the United States with the money that this Administration released to them?

Anybody?

Mr. COLUCCI. Sir, I can just say that as part of our adjudication, we look at each individual who is a prospective immigrant who is participating in the EB-5 program. We have access to a variety of law enforcement, financial, commercial databases, and we can also check intelligence community holdings right on site. And we also do screen the funds that each investor proposes to invest to ensure by a preponderance of the evidence that it does come from legitimate sources.

And we have extensive training in this area. And, in some cases, we even engage our partners overseas to do a little bit more due diligence for us when it's a little bit up in the air.

Mr. GOHMERT. So if somebody is under arrest in a foreign country, has obtained their money from questionable sources, those are not people that you want to grant an EB-5 visa to. Is that correct?

Mr. COLUCCI. Sir, that is correct. We deny a number of individuals who we do not look at—we do not trust their source of funds.

Mr. GOHMERT. Are you sure, though, that this desire to have foreign money come rushing into the United States doesn't sometimes override the desire to make sure that we really get good investors in this country?

Mr. COLUCCI. Sir, I can tell you that the adjudicators that we have hired have the utmost professionalism, and they would never in any way put bringing in another $500,000 into this country above national security or criminal concerns.

Mr. GOHMERT. Okay. Well, that makes me feel so much better, except the first I ever heard of the EB-5 program—and, I mean, I'm

on this Committee. I guess, I should've been aware, but I didn't until this story in February, exactly 4 years ago, from Jana Winter.

It says: A former Mexican Government official wanted for embezzling millions was arrested in Texas this month, then promptly ordered released by the State Department in a case that has one lawmaker demanding answers.

It says: A day after pulling rank on Smith County law enforcement officials, the State Department rescinded the order. But Hector Hernandez Javier Villarreal was gone. Villarreal, the former secretary executive of the Tax Administration Service of Coahuila, Mexico, was arrested in November on charges relating to an alleged scheme involving embezzling millions of dollars from the Mexican Government. He posted $1 million cash bond, got himself a U.S. visa and then skipped town.

The sheriff in my home county at the time said: All we did was make a traffic stop; they didn't have a front license plate. Police were given permission to search the vehicle, found $67,000 in cash and a shotgun. We ran the check on the shotgun, and then all of a sudden everybody in the Federal Government got interested.

But they go onto say that the State Department intervened. Sheriff said: According to Homeland Security officials called to tell him the Federal diplomatic agency had ordered Villarreal and his wife released. Neither State Department nor ICE officials responded to FOX News' request for comment.

Villarreal was granted a visa days after posting a $1 million bond following his arrest in Mexico. The visa Villarreal was granted was an EB-5, which is given to foreigners who invest at least $500,000 in a business venture. Turns out, it wasn't properly invested.

And I appreciate your assurances a great deal that we would never do anything to compromise American safety. Unfortunately, you've already done it, and I have no assurance that you're going to protect us any better in the future, and I think we ought to be suspending this program until such time we can be assured that American citizens are safe.

And from constituents, as a result of this, I've heard from people in Longview, Texas, that they've lost bids to foreign investors because the foreign investors were able to get sweetheart interest deals they couldn't get, so that local property was sold to foreign investors simply because they could get an EB-5 and they could get a better interest deal than American citizens could. That's just not right.

I yield back.

Mr. ISSA. The gentleman yields back.

We now continue on our Texas track, and we go to the gentlelady from Houston, Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Let me thank the Chairman and the Ranking Member.

Having heard of this particular investor visa, what I've heard today from members, however, is very refreshing and very important, because I think you've heard a sense of strengthening and reforming and, if necessary, reinventing this investor visa, but that it does have merit.

I'm very sorry to hear of the circumstances that my friend from Texas just enunciated. And, certainly, to find someone hiding from the law under an investor visa is, for me, horrific.

But I do think Ms. Lofgren has it right that this is not an immigration visa per se; this is an investment visa, and it has some merit. But it does not have any merit for scoundrels who are avoiding the hand of the law in their own country or would be detrimental to any of our citizens. But if they can invest appropriately, then that would be important.

I guess Texas is in the news, because I'm looking at a case that involved Webb County, a facility that was supposed to be in the hotel conference in Laredo, Texas, which had a 1.4 percent unemployment rate. That's a problem. That was the gerrymandering. It happened to be in a case here, and they had to expand to other counties to get their unemployment rate where it needed to be, Mr. Colucci.

I'm going to be—like one of the questioners, I hope that you see this hearing as being helpful, and so let me quickly ask a series of questions, because I would like for this visa to work and to work right.

I quickly want to ask whether or not you have the capacity to raise the minimum—and I didn't hear if that was asked before; I heard $1 million—but raise the minimum investment from $500,000 to $1 million. Can you do that administratively?

Mr. COLUCCI. Ma'am, we are able to do that via a regulatory fix. The only caveat there is we have to consult with Bureau of Labor statistics and the State Department to do so, but we do have that ability.

Ms. JACKSON LEE. And so is the minimum still at $500,000?

Mr. COLUCCI. That is correct.

Ms. JACKSON LEE. In this day and time, even with the markets collapsing, that is chump change. And I don't say that for struggling families; I say that for rich investors. That is ancient numbers from a way, long time ago. So I am going to be on the record for saying it is too low an amount.

The second is, what have you been doing to avoid Wall Street Journal reports that estimate 80 percent of all EB-5 projects need gerrymandering? What have you been doing in terms of reforming that or reviewing projects and not gerrymandering and saying you're not just where the unemployment is?

Mr. COLUCCI. Ma'am, this is something that the Secretary included in his letter to the Committee——

Ms. JACKSON LEE. I understand that.

Mr. COLUCCI [continuing]. As a recommendation for a legislative enhancement. And it is something that we are taking a look at to do through a regulation in which we can further define and create greater consistency with respect to how targeted employment areas are put together.

Ms. JACKSON LEE. Well, I'm going to say two points, because I have census tracts. Right now, the African American unemployment rate, for example, nationally is at 8 percent. Last year, or a couple years back, it was 12. It has been 15 percent. For unemployed youth, it's 15 percent. And so I would venture to say

Latinos, youth, young people fall in some of the same categories, the elderly, et cetera.

There is not a lack in rural areas for places for investment that are legitimate and true. And if it is a regulatory fix, I would encourage you immediately to do two things, which is the $1 million and the stopping of the gerrymandering.

Let me go to Ms. Calderon very quickly, with your business mind. And I didn't hear your specific reforms but a $1 million minimum investment, Ms. Calderon, the gerrymandering I've answered, but can you give me some other frameworks that would be very helpful.

Ms. CALDERON. I think that, as a lawyer, might be where I feel most comfortable going, and that is in footnote 6 of our written testimony stated: Technically, the statute—and this is the 1990 statute—authorizes a third minimum investment level, an amount up to $3 million for areas of unemployment "significantly below" the national average unemployment rate.

Ms. JACKSON LEE. Go ahead. Just expand. You're saying upwards of $3 million. What's your floor, though?

Ms. CALDERON. Well, I mean, I don't feel comfortable saying that. I just think that Congress, this Committee should be aware of the fact that in the actual statute, there is a provision that, in 1990, Congress believed that certain areas, there could be investment by immigrants through this program, but it should be at a higher rate.

Ms. JACKSON LEE. A higher rate of investment?

Ms. CALDERON. Right.

Ms. JACKSON LEE. Mr. Gordon, do you believe that as well? I know you had some reforms.

Mr. GORDON. Sure. Categorically, there should be a tiered system in the market to reflect the amount of bang for the buck, as people are saying, or social value creation. In the communities in which we invest—Indianapolis; South Haven, Mississippi—in the office we just leased—we leased the 9th office of 19; there are still 10 vacant offices.

Our money means something in this community. It's not a fancy, rich community. A large trucking company in the area just pulled out, and we're now hiring executives from that, people who would have otherwise lost their careers. The money matters. And having an advantage over getting investors' attention, it matters as well.

I lose interest to the vast majority of investors I interact with on a daily basis because we are not the fancy, you know, gleaming, you know, tower in a large gateway city. So we need an advantage to help build an America where the value will be greatest for our society.

Ms. JACKSON LEE. I thank you.

And that investment amount is what you're saying makes value and creates jobs in census tracts that actually need it?

Mr. GORDON. Absolutely.

Ms. JACKSON LEE. Mr. Chairman——

Mr. ISSA. I thank the gentlelady.

And I note that they've called the vote.

If I can just, for the record, Mr. Colucci, if you change the amount under your rules, what will the effect be on those 65,000

or more in line? And just as quick as possible. We're going to Mr. Marino.

Ms. JACKSON LEE. Thank you for that, Mr. Chairman.

Mr. ISSA. Yeah, I think it completes your thought.

Mr. COLUCCI. I think my best answer would be that, in the past, when USCIS—and before us, INS—put forward new regulations with respect to immigration, it was always prospective looking as opposed to——

Mr. ISSA. Thank you.

Mr. Marino.

Mr. MARINO. Thank you, Mr. Chairman.

Mr. Colucci, first of all, you come from one of my favorite agencies, ATFE. I did a lot of work with them over the years, and a great bunch of people. But since you drew the short straw here today, I have some questions concerning my prosecutorial background.

And let me start out by, I was paying closest attention to Ms. Gambler's statements about difficult to conduct fraud, difficult to conduct fraud interviews or investigations to talk to people.

Let me ask you this, sir: Do you actually talk to the investors? Do you have face-to-face interviews with these people as to what their intentions are and where they're coming from? And not only the investors. I want to more specifically talk about the city officials or the county officials who keep expanding these lines out blocks, hundreds of yards, miles, to get this money?

Mr. COLUCCI. Sir, I think my best response to that would be: any investor who comes in from overseas is interviewed by the Department of State prior to being allowed to enter into the United States. And often they have the investor's petition in front of them and can ask them questions based on the evidence that was submitted.

Mr. MARINO. Okay. Do you ever go back after a certain period of time to see who was employed and how many are employed and where they are working?

Mr. COLUCCI. Sir, we do, after the immigrant investor comes into the United States. After 2 years, they file with us a petition to remove conditions; in other words, so they can be here without conditions. We do not, as part of that—we do get the information, but we do not, as part of that——

Mr. MARINO. So you don't go out and talk to—you don't get a list of employees and you don't call these people in or you don't go to the job site and talk to them about—to see if they're actually there?

Mr. COLUCCI. Sir, we are about to actually launch something called a random site visit program and——

Mr. MARINO. Okay. I understand what you're launching. And, again, I'm not targeting you, per se; I'm targeting the system here.

Let's switch gears a little bit, since we're not going out and talking to the people that are supposed to be employed. Is there any conversation with the officials that are expanding these boundaries and as to why they are expanding the boundaries?

Mr. COLUCCI. Sir, I can tell you that we often—I shouldn't say "often"—we sometimes field calls from individuals within the States who are putting these boundaries together, and we do point

them to our regulation, which does allow them to put these boundaries——

Mr. MARINO. Okay. Let me go back a little bit here. Do you have the resources to do what I'm getting at? Do you have the investigators to go out and interview to see if these people are working? Do you have the investigators available to go out and say, I want a complete explanation as to why you're expanding these boundaries? Because as a prosecutor for 18 years, I am automatically suspect of everything.

So, given that fact, don't you think someone should be looking at the dealings, the dealings between the officials that are expanding these lines and the people that are from out of the country or even within the country that are investing into these areas? I'm a little bit suspect as to: follow the money.

Mr. COLUCCI. Sir, what I can tell you is, prior to coming into this position, that's exactly what I did for 5 years.

Mr. MARINO. I know.

Mr. COLUCCI. That was my background is following the money. And so I agree with that assertion. That is something that we do every day with respect to those individual petitions.

Mr. MARINO. I'm going to get right to the point. Is there any question—has anyone thought about the fact that given the—because the cities or the counties have the authority to expand the lines, has anybody ever thought about—is there any fraud taking place there? Is there any bribery taking place there? Is there any cash exchanging hands? This is something that I think is just ripe for oversight and investigation that probably could turn into a criminal investigation.

Mr. COLUCCI. Sir, I've been with the program for about 2 years, and what I can tell you is that we have not seen an instance of outright fraud with respect to how a particular State puts together——

Mr. MARINO. But you don't have the resources. I'm giving you a chance here to tell me. It sounds like you do not have the resources to look into these matters. Am I correct in making that assumption? And if you do, somebody better get off their can and fire somebody that should be doing these investigations.

Mr. COLUCCI. Sir, I appreciate your comment and suggestions, and I would point to, we do have resources. We have a fraud detection and national security team, 20 strong, embedded within the program. And we also have fraud detection and national security specialists around the country.

And if something did look like it merited a criminal investigation, I believe that would be—if it were something like graft, I believe that would be in the jurisdiction of the FBI. And we do have close relationships with the FBI in Washington, D.C., and we certainly would not hesitate to bring that to their attention.

Mr. MARINO. I see my time is expired.

I yield back.

Mr. ISSA. Thank you.

And we're going to do a lightning round.

We now have the gentlelady from California, Ms. Chu.

Ms. CHU. Yes. Mr. Colucci, I have seen firsthand how the EB-5 program can spur development in a community, but of course, improvements must be made, especially with regard to fraud.

But just last month in California, I attended a groundbreaking ceremony for a development in my district that was financed in part through the EB-5 program. And I do believe that this particular project will revitalize this area.

But I am really concerned about the backlog. I see that, as of November 2015, there were 17,662 individuals with approved petitions. And then for the first time, in 2014, the annual cap on permanent resident visas for Chinese nationals was reached. With this current backlog, it may take between 6 to 7 years for these visas to become available.

So, considering that the number of the EB-5 visa petitions have skyrocketed, can you tell me why you think they've skyrocketed, but in particular, what are you doing about this backlog?

Mr. COLUCCI. Thank you for the question.

I can tell you that no one in the program is satisfied with respect to where our processing times stand today. In some ways, we were a victim of the success of the program. Just as we were transitioning the program to Washington, D.C., the program truly spiked in popularity.

From fiscal year 2013 to 2014, we had an increase of 70 percent of immigrant investors seeking to come into the country and then another 30 percent spike between 2014 and 2015. And I will say, leading up to the sunset dates, in September and December of this past year, we received an unprecedented surge in applications.

We are working diligently to reduce this backlog. Last year, we actually approved close to 9,000 petitions, which is probably 2-plus years of visas. We do have 113—or 115, I should say, staff members on board right now, and we hope to hire up to 171 by the end of the fiscal year.

And then just one final point. In a policy memorandum that we issued in May of 2013, it allowed developers and regional center principals the ability to use bridge financing, temporary financing and replacing that with financing through the EB-5 program. And that is because we didn't want to stand in the way. We didn't want our processing times to compromise economic development within the United States.

Ms. CHU. You mentioned that there was a spike at the time of the deadline in each period. And is the fact that there is—are these short-term extensions, that that is affecting the increase in these petitions?

Mr. COLUCCI. Yes, ma'am. I believe prior to the two spikes, as we mentioned in September and December, I believe we had about 12,000 or so pending petitions. And now we're in the neighborhood, as you mentioned, of about 21,000 or 22,000. So that greatly affected the number of filings we received.

Ms. CHU. So, therefore, if the program were on a more even basis, you know, with regard to time extensions, we might not have these spikes.

I would also like to raise the issue about the fact that there are 10,000 visas, but in reality, the actual number of investors is far

less, you know, because the family members are considered part of that, correct?

Mr. COLUCCI. That is correct.

Ms. CHU. Yes. And so has the Administration explored the possibility of considering foreign investors and their immediate family members as a single unit in terms of counting the visas? We certainly see a precedent with this in the H-1B program where you only count the actual recipient under the quota and family members are excluded from the cap.

Mr. COLUCCI. Yes, ma'am, that is correct. As, I think, the Chairman indicated, we believe approximately for every immigrant investor, that means two and a half or three other visas because of spouse and derivatives or children.

Ms. CHU. But have you considered the idea of having them count as one unit?

Mr. COLUCCI. I'm sorry?

Ms. CHU. There's 10,000, but in reality, if you looked at the actual number of visas——

Mr. COLUCCI. Right. There's a cap of 10,000 visas that can be issued each year, so correct.

Ms. CHU. But the actual number of actual investors is far, far less.

Mr. COLUCCI. It's probably 3,500 to 4,000.

Ms. CHU. Exactly, yeah. Well, anyway, that's my concern, and I'm saying consider the possibility of counting them as one unit.

And, also, Ms. Calderon, you mentioned that the California model is a good starting place. And why is that?

Ms. CALDERON. Well, at least it sets a limit on the number of census tracts that can be aggregated, and it sets the number at 12. We're not sure what the significance of 12 is, but it's better than many other States where there is no limit. And there are no stated guidelines that one can objectively follow regarding the aggregation approach that is used.

In terms of the comment that was made by——

Mr. ISSA. If you could be brief, because Ms. Chu is going to miss her vote.

Ms. CALDERON. Yes. I just wanted to say in terms of the States making the determination, in States, typically, there are economic development offices that are making these determinations, and they're seeking that the project, the capital investment, be made in their State.

Ms. CHU. Thank you.

Mr. ISSA. Thank you.

And I apologize, but this is going to conclude today's hearing. A number of things I need to ask you. Would all of you be willing to answer additional written questions placed by those individuals who could not be here to ask them because of the short time?

Thank you.

Additionally, without objection, all Members will have 5 legislative days in which to submit additional written questions for the witnesses and additional materials for the record. That also includes 5 additional days if you have anything additional to put in, including Mr. Colucci.

I thank you very much. We stand adjourned.

[Whereupon, at 3:58 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Material submitted by the Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Member, Committee on the Judiciary

AILA AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Statement of the American Immigration Lawyers Association

Submitted to the House Judiciary Committee for the Hearing: "Is the Investor Visa Program an Underperforming Asset?"

February 11, 2016

Contact:

Gregory Chen
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The American Immigration Lawyers Association (AILA) respectfully submits this statement to the House Judiciary Committee. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 14,000 attorney and law professor members.

Since its creation nearly 25 years ago, the EB-5 Regional Center Program (Regional Center Program) has played a vital role in stimulating economic development, investment and job creation throughout the United States. During the recession, EB-5 capital provided a viable financing option when conventional domestic capital was limited and costly. EB-5 capital continues to fuel job creation and investment in the United States. A recent Brookings report shows that the EB-5 program has created over 85,000 full-time jobs since 1990.[1] In fiscal year 2014 alone, the EB-5 investor program brought in at least $2.5 billion in foreign investment.[2]

EB-5 regional centers have facilitated financing for projects in underserved areas like Pima County, Arizona. For example, the Green Valley Hospital project had encountered challenges securing the $79 million needed to complete construction of the regional hospital. EB-5 funding provided $56 million to the project, about 70 percent of the total financing needed. EB-5 capital

[1] http://www.brookings.edu/~/media/research/files/reports/2014/02/05-eb5/eb5_report.pdf
[2] http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performancedata_fy2015_qtr4.pdf

made the hospital a reality, creating a health care facility for patients who previously had to travel 30 miles to the nearest hospitals in Tucson.[3]

In Vermont's northeastern region, the loss of manufacturing, lack of infrastructure, and difficulty in obtaining investment capital, resulted in the state's highest unemployment and lowest wage rates in the 1990's. The Jay Peak Ski Resort, one of the single biggest projects in the country ever financed by the EB-5 program at a cost of over $785 million, helped stimulate and modernize the region's previously flagging economy.[4] In 2015, Vermont's regional center program with Jay Peak as its premier project had well over 1,000 investors and with the jobs they created, has been an important factor in spurring the state's economy.[5]

Created by Congress as a pilot program in 1992, the EB-5 Regional Center Program needs to be reauthorized periodically to ensure its continuation. In December 2015, Congress reauthorized the program through September 30, 2016. As Congress considers legislation to reauthorize the program, AILA recommends the following:

Regional Center Program Integrity: AILA supports measures that will enhance Regional Center Program transparency and fraud prevention. These measures must be balanced with provisions ensuring due process protections.

Indirect Job Creation: Typically EB-5 commercial enterprises are not operators of job creating businesses but funding vehicles for job creating businesses. Current law and regulations allow job creation to be measured by methods that are well-established in the econometrics field to calculate direct and indirect jobs. These methods are not particular to the Regional Center Program, but rather are commonly used for economic impact modeling by governments and private actors. Indirect job counting should continue to be allowed under any new proposal.

Targeted Employment Area (TEA): TEAs were created to encourage investment in rural areas or areas with a high unemployment rate of at least 150% of the national average. Recent proposals have sought to incentivize EB-5 investment in both economically challenged areas and non-distressed urban areas that have driven EB-5 Program's growth in recent years. It is essential that future proposals strike a balance of incentives so that the EB-5 Program can continue to attract foreign capital that in turn creates jobs in the U.S.

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[3] http://tucson.com/news/business/green-valley-hospital-s-foreign-investors-get-green-cards-in/article_7cd4a4cd-dc84-5865-903c-91555b7395d6.html

[4] http://www.americanimmigrationcouncil.org/special-reports/new-american-investors-making-difference-economy

[5] http://accd.vermont.gov/sites/accd/files/Project%20Contact%20List%201.13.pdf

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- **Visa Backlogs:** The Regional Center Program's success as a job creation and financing vehicle for U.S. projects faces a serious threat from a growing visa backlog. Currently there are approximately 20,000 pending EB-5 petitions that will create a backlog of approximately 6 to 8 years. The number of pending petitions speaks to the success of the EB-5 Program, but investor demand will dwindle when the visa backlog emerges. Reauthorizing legislation for the Regional Center Program should provide a solution that reduces this backlog.

- **No Retroactive Application of New Laws:** AILA opposes the retroactive application of any changes that may be made to the Regional Center Program based on the principle of ensuring basic fairness to Program applicants. If a new law with any substantive change were applied retroactively, many existing EB-5 petitions would be denied. Significant harm to thousands of investors and ongoing U.S. projects would result. We encourage Congress to ensure prospective application of any new law reauthorizing the Regional Center Program.

AILA looks forward to working with the House Judiciary Committee to reauthorize the EB-5 Regional Center Program and make it even more helpful and beneficial to our economy.

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United States House of Representatives Judiciary Committee
"Is the Investor Visa Program an Underperforming Asset?"
Submission for the Hearing Record
EB-5 Investment Coalition
February 11, 2016

Dear Chairman Goodlatte and Ranking Member Conyers:

The EB-5 Investment Coalition (Coalition) respectfully submits the following statement for inclusion in the hearing record for the hearing of February 11, 2016 entitled: Is the Investor Visa Program an Underperforming Asset?

The EB-5 Investment Coalition is a broad-based organization of businesses, industry leaders, trade associations and elected officials mobilizing around the shared mission of putting Americans to work by reauthorizing and strengthening the critical EB-5 Regional Center Program. We are a bipartisan coalition representing a diverse range of geographic regions and industries. We are committed to working with Congress and other key stakeholders to advance robust, common-sense reforms that ensure the strongest possible EB-5 program is reauthorized for the future.

We appreciate the Committee's attention to the EB-5 immigrant investor program. While we agree that reforms are needed, we also believe this program has been highly effective in attracting foreign direct investment to American communities and creating U.S. jobs. As Immigrant Investor Program Chief Nicholas Colucci testified at the hearing, $8.7 billion has been invested through the program just since October 1, 2012. The members of the EB-5 Investment Coalition have been responsible for facilitating a significant amount of EB-5-related investment, and are committed to continuing this work.

We write to provide the EB-5 industry's perspective on the important policy issues discussed during the hearing. We hope this submission will provide some balance and perspective to the Committee's record about several issues raised at the hearing.

Increased Oversight and Program Integrity

In general, the Coalition strongly supports the integrity and oversight-related reforms in S.2415, H.R.4530, and S.1501. Although we believe that some of the provisions in these bills could benefit from further refinement, we perceive broad support for the majority of the provisions in these bills. The Coalition has made public this support in multiple communications to Congress, and we were disappointed that the most recent extension of the program did not contain integrity-related provisions that had such broad industry support. We remain committed, as we have been, to seeing these important measures implemented to ensure the program's integrity for both investors and the American job creators that are using the program.

Legislative History and Intent Underlying the EB-5 Program

During the hearing, there was considerable discussion about the program's legislative history and Congress's original intent in enacting the program, and in particular, the program's Targeted Employment Area (TEA) component. Despite witness testimony and some Committee Members' contentions, the plain language of the statute does not make clear any intent from Congress for the program's TEA component to function as a place-based economic development program.

Some witnesses and Members of the Committee argued that the program's principal purpose, as intended by Congress, was to focus investment into economically distressed areas in a manner similar to Community Development Block Grants (CDBG) or the New Markets Tax Credit (NMTC). Chairman Goodlatte stated: "We want to revitalize distressed areas and to do that, projects actually have to be located in those areas." Ranking Member Conyers stated: "[I]t is not enough to have development in more affluent areas where low income workers might commute to, because the projects will still leave these communities of concentrated poverty no better off in terms of development and infrastructure after their conclusion." Neither the statute's plain language, nor for that matter any of the Congressional Record statements from the time of enactment, support the now very precise view of the program being asserted by some as a place-based economic development program. Proponents of the TEA rule as a place-based economic development tool ascribe a far more specific intent to its enactment than is warranted from the very limited contemporaneous statements of the time, or the statutory text itself.

Consider the best indicia of Congress's intent—that is, the plain language of the statute. The text defines the term TEA to mean, "at the time of the investment, a rural *area* or an *area* which has experienced high unemployment (of at least 150 percent of the national average rate." (8 U.S.C. 1153(b)(5)(B)(ii).) TEAs are "areas" as Congress defined them; they are not "Census tracts," "communities" or "neighborhoods" under the statute's text. Nor must they be "impoverished," "distressed," or in need of "revitalization." They are areas that are either "rural" or "high unemployment." Other than the 150% unemployment rate metric, Congress provided no further language as to how "high unemployment areas" should be discerned. Congress did define "rural area" for TEA purposes, as "any *area* other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). (*Id.* § 1153(b)(5)(B)(iii).) Thus, the statute's definition of rural area, for TEA purposes, does not distinguish between wealthy and impoverished rural areas. According to the plain language of the statute, Congress determined that investment in *all* rural areas was worthy of incentive through the use of the TEA mechanism, no matter whether the rural area was affluent or impoverished.

Professor Calderon's testimony suggests that the TEA construct for high unemployment areas was enacted in order to focus development in economically struggling, impoverished, or distressed areas. But as Professor Calderon acknowledges, Congress did not define "area" for the purposes of the statutory term "high unemployment area". Similarly, Mr. Gordon, who was testifying on behalf of his company, the E3 Investment Group and the More American Jobs Alliance (MAJA), imputes the following intent to Congress's enactment of the TEA provision: "TEAs are supposed to turbo-charge the social benefit created by the resulting job creation by

focusing the activity in economically distressed areas. Simply put, job creation in economically distressed areas is more valuable to our society." None of what Mr. Gordon testified to, nor the value judgments he describes, can be found in the TEA provisions in INA 203(b)(5). Though Mr. Gordon's opinions and policy views about the intent of the high unemployment TEA provisions may be financially beneficial to his company E3 Investment Group and his fellow MAJA member CP Homes, there is no support in the statute for them. In addition, as Professor Calderon testified and discussed further below, when considering changes to investment levels and eligibility criteria for areas of investment Congress must strike the right balance between directing foreign investment and maximizing the program's overall economic impact.

In short, it may be the case that the Committee now wishes to reform EB-5 so that it takes its place among other federal place-based programs. But it is another thing entirely to say that, when Congress created the EB-5 visa program back in 1990, and its TEA provision, the legislature intended at that time for EB-5 to serve a place-based role with an emphasis on neighborhood revitalization and impoverished area redevelopment. There is no indication in the statute's plain text that was the intent, and the legislative history cuts both ways. Moreover, based on the Coalition's research of other federal place-based incentive programs, we are unaware of any such program created by Congress where the scope of "places" to receive beneficial treatment stretches so broadly as to cover only urban "distressed and impoverished" and *all* rural areas (regardless of whether they are prosperous or distressed). We respectfully submit that it is not reasonable to now claim, more than 20 years after enactment, that the statute's intent with respect to urban high unemployment "areas" means anything more precise or policy-specific than its rural "areas" statutory counterpart.

Furthermore, none of the witnesses or the Committee Members discussed the distinction between the permanent EB-5 program, and the Regional Center Program, which was enacted in 1992 with a distinct purpose and is the subject of reauthorization efforts. In its committee report recommending inclusion of the Regional Center Program in the Commerce, Justice, Science and Related Agencies appropriations bill in 1992, the Senate Appropriations Committee described the Regional Center Program as a "program under the existing Employment Generating Investor Visa Program . . . *to determine the viability of pooling investments in a region of the United States in order to develop interrelated enterprises which would increase the employment base and economic productivity of that region.*" (emphasis added). When the statute's TEA provision is read in light of the Regional Center Program's overriding purpose to spur regional economic development, assertions about the TEA provision's role as a narrow, place-based policy are even less persuasive.

To summarize, and in order to provide a countervailing viewpoint to those espoused by the hearing's witnesses, we would submit that the statutory language simply does not suggest that Congress intended for EB-5 investment to serve as a neighborhood revitalization mechanism similar to other federal place-based programs like the CDBG and NMTC programs. Indeed, when Congress created the EB-5 visa program and defined TEAs in 1990, it was surely aware of place-based statutes like the Community Reinvestment Act (passed in 1987) and the Low-Income Housing Tax Credit program (authorized in 1986) which focus on economic development in distressed areas; it could have modeled the high unemployment TEA with similar specificity, but it did not. The statute's non-rural high unemployment TEA provision

does not indicate any intent other than a desire to ameliorate high unemployment in non-rural "areas," which, as Professor Calderon pointed out, was left undefined by Congress.

No one at the hearing disputed that a construction project in an urban business district, irrespective of that district's wealth or employment level, will employ many people from a variety of locations, including from areas of high unemployment, within commuting distance of the project within a city. Where this is the case, the plain statutory intent is fulfilled. Plainly, a construction project in an urban business district is capable of ameliorating high unemployment in another part of an interconnected metropolitan environment. The reality of urban areas is that people do not live where they work—and that is true by and large regardless of whether a resident's neighborhood is affluent or impoverished. Again, this fact supports the underlying intent of the Regional Center Program, which, according to Congress was intended to "increase the employment base and economic productivity" of a region.

The EB-5 Investment Coalition would submit that "area" in the non-rural setting could just as reasonably mean an entire city experiencing an above-average unemployment rate, as it could a single census tract, or a grouping of census tracts. Congress did not, under the statute's plain language, say that "high unemployment area" meant anything more than that.

Targeted Employment Areas

First, in order to ensure that the hearing record is accurate, we would respectfully point out the need for clarification in regard to Chairman Goodlatte's opening statement. During his statement, Chairman Goodlatte presented a visual slide of a targeted employment area in Brownsville, Texas. Chairman Goodlatte noted this TEA as an example of perceived abuse of the current program because the TEA encompassed an area nearly 200 miles long. First, we agree that this would go beyond what is reasonable as a TEA primarily because it is not realistic to believe that a project being built in one area of such a TEA could realistically address high unemployment at its other end as the geographic distance is beyond a normal or reasonable commuting distance. More importantly, however, the TEA that Chairman Goodlatte presented was apparently never approved by USCIS, and thus was not ever operative within the EB-5 program. We request that the record reflect that this example, while compelling, was never approved by USCIS nor became a reality.

In addition to the Laredo-Brownsville TEA example, the Chairman's statement also included two exhibits depicting TEAs in New York City. We believe the impression conveyed in showing these exhibits was an attempt to portray these three TEAs as equivalent abuses of boundary gerrymandering. With respect, however, we believe the comparison of these TEAs was "apples to oranges." The Committee failed to account for the widely varying distances, population densities, and Census tract sizes portrayed in each exhibit. As noted above, the Laredo-Brownsville TEA designation spanned 200 miles, generally tracking the US-Mexico border along the Rio Grande River. A Google search indicates that the driving time from each of these Texas cities at the end points of the putative TEA is 3 hours and 26 minutes. In sharp contrast, the TEAs in both New York City examples covered only several miles from end to end. The neighborhoods in these Manhattan areas are connected by an extensive network of subway and bus lines, with commuting times in the range of 30 minutes. Accordingly, we request that

the record reflect the extreme differences in the Texas and New York TEA examples used as exhibits in the Chairman's statement, in terms of the average Census tract size and population density of each TEA, the geographic distance covered by each TEA, worker commute statistics (from Census tract to tract) in those TEAs, and travel times to cover the distance of each TEA cited by the Chairman.

The EB-5 Investment Coalition agrees that aggregation of census tracts is an imperfect system for designating a TEA. We also agree, however, that USCIS' predecessor agency, Immigration and Naturalization Service (INS), was correct in its determination through its regulations that state officials were best suited to make judgments about economic development in their local areas. In the context of a census tract aggregation model for TEAs, we oppose efforts that have appeared in recent EB-5 legislation that would remove authority from state elected officials to make local judgments with regard to investment. Local officials are far better suited than USCIS to make such local judgments and should have a role in determining where investments can and should be made.

As Professor Calderon cautioned in her testimony, Congress must strike a "delicate balance between appropriately narrowing the scope of the TEA and building in flexibility to avoid the Program reverting to the underutilized state that existed before 2010." Professor Calderon's admonition points out an irony inherent in the criticism leveled against the program's current use: but for the larger projects and the program's mainstream use that has engendered such fierce criticism, it would very likely still be an undersubscribed program not achieving its potential as a job creation engine. Rather than perpetuate the often partisan, needless rural-urban divide that has emerged during Congress's consideration of EB-5 reform, reform proponents should focus on how best to both maximize the program and equitably incentivize investment in truly economically distressed areas. By way of example, the Coalition would point to the compromise reached on this point in Senator Leahy's amendment in the Senate Judiciary Committee to S.744 during consideration of that bill in the 113th Congress.

EB-5 Investment Coalition Efforts to Find a Compromise on TEA Policy

In months leading up to Congress' reauthorization of the program through September 30, 2016, the Coalition proposed several ideas to the House and Senate Judiciary Committees to make the TEA process a more rational and justifiable way to focus foreign investment. For example, the Coalition developed a replicable process, supported by publically available data, relying on census tract-to-census tract data to establish TEAs, with the goal of ensuring that a project being developed in one part of a metropolitan area had the potential to employ individuals who lived in an area of significant high unemployment. The Coalition alternatively proposed abandoning the current flawed TEA model in favor of a single investment amount accompanied by a series of visa set asides and other incentives to ensure equitable distribution of a finite number of visas. Unfortunately, these ideas were rejected by Senate and House Judiciary Committee leaders. Instead, proponents of EB-5 reform reverted to a model highly similar to the current TEA model that has received so much criticism; a census tract aggregation model with an arbitrary cap on the number of allowable tracts. This is no more than a slightly modified version of the current "gerrymandering" system.

Effective Dates and Retroactivity

The EB-5 Investment Coalition is well aware of the current backlog of investor petitions and petitions seeking project approval, which was a predictable and natural response to the impending sunset of the Regional Center Program. And we appreciate the potential impediment the backlog has on swift implementation and effectiveness of any future policy reforms to the EB-5 program. We agree in part with Mr. Gordon's testimony, insofar as he recommends that future changes to the program not be applied to individual investors retroactively. We agree that such action would imperil foreign investor confidence in the United States Government. We also believe, however, that any future changes to the program that would significantly affect American businesses seeking EB-5 investment, which had devoted significant resources in the planning of complex development projects and project financing under duly enacted rules at the time of any filings, should be protected and treated fairly. Unlike Mr. Gordon and the More American Jobs Alliance, we believe American businesses, and the Americans they employ, should be protected in any future legislation in the same manner as foreign investors seeking to immigrate to the United States.

Conclusion

The EB-5 Investment Coalition is committed to working with Members of Congress to enact sensible and effective reforms to the EB-5 Regional Center Program. While we respectfully disagree that the program has been "abused" to the extent that critics contend, we recognize that improvements can be made in many areas within the program, and we support such improvements. In general, we strongly support the integrity and oversight-related reforms in S.2415, H.R.4530, and S.1501, which are designed to prevent fraud and to give USCIS the authorities it has told Congress it needs to conduct rigorous oversight of the program.

Going forward, we hope that we can work together and elevate the discussion about the program's future. We are confident that working together we can succeed in enacting meaningful program reforms, while at the same time ensuring that the program's overall economic potential continues to be fully realized. If Congress desires to make fundamental policy changes to the program, the Coalition is ready to engage in constructive dialog to achieve these goals. We thank you for accepting this submission for the hearing record.

Supplement to the Oral Testimony of Jeanne Calderon, Clinical Associate Professor, Stern School of Business, New York University

Supplement to Oral Testimony
Jeanne Calderon

February 16, 2016

Jeanne Calderon
Clinical Associate Professor
Stern School of Business
New York University

Hearing on "Is the Investor Visa Program an Underperforming Asset?" held on February 11, 2016

Before the
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

This letter supplements my oral testimony given at the Committee's Hearing referenced above.

The purpose of this letter is to clarify my response to a question posed by Ranking Member Conyers.

Representative Conyers asked a question as to how we know whether the workers whose jobs are created by a project that is funded with EB-5 capital earn a living wage. I responded that we do not now this, and explained that the economic models that regional centers typically rely upon to establish the number of jobs created are not designed to identify the workers or to indicate the amount of the wages earned by the workers.

As a follow-up, Representative Conyers asked who should check this. I responded by stating that USCIS could establish clear and unambiguous rules for the individual states to apply, but it would be preferable for USCIS to assume that role. My comment more appropriately relates to the USCIS' delegation of authority for TEA designations to the individual states. Pursuant to the Regional Center Program, regional center investors may count indirect jobs using reasonable methodologies to show the number of jobs that are created by the project. Many regional center projects rely primarily upon indirect jobs to satisfy the job requirement. USCIS regulations and policy allow economic impact models to be used for these purposes. The law does not require any information about specific workers, including the location of their residences and the amount of the wages they earn. The economic models do not provide this information and are not intended to do so. After the regional center immigrant investor files each of his petitions (I-526 and I-829) with USCIS, the process includes the agency's review of the job-creation methodology. The individual state's role is limited to the designation of the project location as a TEA. The state is not otherwise involved in the immigration process including the determination of whether the job creation requirement has been met.

Thank you for allowing me to clarify this.

Jeanne Calderon

Response to Questions for the Record from Nicholas Colucci, Chief, Office of Immigrant Investor Program, U.S. Citizenship and Immigration Services

Question#:	1
Topic:	USCIS Staffing Levels
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: Can you detail staffing levels at USCIS responsible for administering EB-5 and how they are assigned by work categories? Can you identify plans to increase staffing, by work category and over what time frame?

Can you provide an organization chart that outlines the structure of the EB-5 adjudication departments and how many staff are assigned in each work area?

Response: As of March 10, 2016, IPO is staffed with 118 full-time employees and is recruiting and hiring to reach its FY 2016 authorized staffing of 171 by the end of calendar year (CY) 2016.

Immigrant Investor Program Office (IPO) Current (3/10/2016) and Projected Staffing[1]

	Filled Positions	**Positions to Be Hired**	**Total Authorized Positions for FY 2016**
Adjudicators	51	29	80
Economists	26	4	30
Supervisors/Managers	18	10	28
Management Program Analyst / Other / MSS / SA / RA / Student	20	8	28
Statistician	1	0	1
Immigration Service Analyst	2	0	2
Auditor	0	2	2
Total	118	53	171

[1] This chart describes the staffing assigned directly to IPO and excludes staff from the Fraud Detection and National Security EB-5 Division, which is embedded within IPO, and attorneys within USCIS' Office of Chief Counsel, which supports the EB-5 program.

Question#:	2
Topic:	Communicating the Adjudication Status
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: USCIS has indicated previously that they were considering additional avenues by which they would communicate the adjudication status of applications and potential ways in which regional centers could communicate directly with staff assigned to their applications. Are these still under consideration; what is the status and will any of these new approaches be adopted soon so that regional centers are better able to serve the objective of job creation through consistently available and meaningful channels of communication with your staff?

Response: The EB-5 Customer Support page of the USCIS Website (https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-customer-support) includes instructions for stakeholders to check the status of their cases online, send case-specific inquiries and email IPO and stakeholder engagement mailboxes. Recently, we updated the site to allow stakeholders to escalate their inquiries if our initial response has not resolved their issue. A senior IPO staff member is assigned to work each case.

The IPO Customer Support team was established in April 2014 to address inquiries and requests for assistance and to manage the IPO's stakeholder engagement plan. This team, which responded to more than 11,710 customer inquiries in the second half of FY 2015, complements outreach efforts through the timely identification and elevation of issues requiring action or stakeholder engagement.

Question#:	3
Topic:	Overdue Applications in Ohio
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: It is my understanding that the Immigration Investor Program has a policy of considering and assigning project applications in the order they are received. However, it has come to my attention that there have been delays and inconsistencies with the processing times. These delays may have negatively impacted regional centers in good standing with USCIS their borrowers and investors and even prevented their ability to assist other job creating projects throughout Ohio. Can you please explain the reason for the overdue applications associated with Ohio regional centers and what will be done to rectify this situation?

Response: USCIS has experienced a tremendous surge in EB-5 applications and petitions in recent years, including spikes in filings just before the program was scheduled to sunset in September 2015 and again in December 2015. As of September 30, 2015, there were almost 750 approved regional centers, a nearly 25 percent increase from the number of regional centers that existed at the close of FY 2014. Between FY 2014 and FY 2015, receipts of Form I-526, *Immigrant Petition by Alien Entrepreneur*, increased by approximately 32 percent from 10,923 to 14,373, while receipts for Form I-829, *Petition by Entrepreneur to Remove Conditions*, increased by approximately 10 percent from 2,516 to 2,767. During this same time period, receipts of Form I-924, *Application for Regional Center under the Immigrant Investor Pilot Program*, increased by approximately 190 percent from 277 to 803.

In response to the significant increase in application and petition receipts, USCIS has taken many actions to improve overall efficiency, including:

- Concentrating resources to review and adjudicate aging cases. With this effort, IPO has reduced the number of aging cases and continues to focus on reducing processing times.
- Continuing to hire additional adjudicators and economists to reduce backlogs. As of March 10, 2016, IPO is staffed with 118 full-time employees and is recruiting and hiring to reach its FY 2016 authorized staffing of 171 by the end of calendar year (CY) 2016.

While IPO generally follows a first in-first out policy for adjudicating cases, we do not follow a strict chronological order for assigning EB-5 cases. We gain operational efficiencies in adjudicating Form I-526 and Form I-829 petitions by grouping cases according to the associated new commercial enterprise. In addition, the complexities of the particular case may impact the actual adjudication time for any EB-5 petition or application, and the need for USCIS to issue requests for additional evidence may further

Question#:	3
Topic:	Overdue Applications in Ohio
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

prolong the adjudication timeframe. For these reasons, some cases may be adjudicated outside of chronological order of receipt. IPO has made significant improvements to ensure cases are assigned as close as possible to chronological order and continues to develop and deploy new tools to improve case assignment. Regardless of where regional centers are located, whether it be Ohio or another state, IPO adjudicates regional-center-related filings based on the factors listed above.

Additionally, USCIS continues to engage its customers through frequent stakeholder engagements, informing them of operational updates, offering suggestions for avoiding adjudicative delays, and providing the latest statistics on each form type. USCIS expects that improvements made operationally and through regularly scheduled engagements with stakeholders will, over time, reduce delays in processing of EB-5 applications and petitions. Additionally, we note that USCIS approved more than 8,000 Form I-526 petitions last fiscal year, which is equivalent to about two years' worth of visas (for petitioners and their spouses and derivatives).

Question#:	4
Topic:	Addressing Misconduct in the EB-5 Program
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

Question: H.R. 4530, introduced by Representatives Polis and Amodei, its Senate companion S. 2415, and S. 1501, all provide U.S. Citizenship and Immigration Services (USCIS) with broad new authorities to address misconduct in the EB-5 program. For example, these bills would provide USCIS with clear new authority to terminate regional centers, debar individuals, conduct background checks of program participants, and revoke investor visas, based on both fraud, misrepresentation or criminal misuse, or national security-related concerns. Given that the Department of Homeland Security has asked in the past for these types of authorities, do you think these provisions would be helpful? If, so, in what way? Are there other integrity measures that should be included?

Response: Over the last few years, USCIS has taken many steps to improve its oversight and administration of the EB-5 program, including the establishment of the Immigrant Investor Program Office (IPO) in Washington, DC and the creation of a dedicated team of embedded fraud detection and national security specialists to support the program. We have also taken steps to ensure program transparency for stakeholders as well as for the IPO employees who adjudicate cases. However, as Secretary Johnson noted in his May 2015 letter to the House Judiciary Committee, there is still more work to be done to improve the EB-5 program, some of which requires Congress' help. The recommendations made by Secretary Johnson included Congressional authorization for USCIS to:

- Terminate a regional center for criminal or national security concerns;
- Deny a regional center application if USCIS determines there is significant fraud risk;
- Ban regional center principals with certain criminal violations and fraud- or securities-related civil violations;
- Deny or revoke petitions due to fraud, misrepresentation, criminal misuse or threats to national security;
- Require enhanced reporting and auditing including certification of compliance with U.S. securities laws and disclosure of any pending litigation; and
- Impose additional sanctions, such as fines and suspensions, to promote compliance, in addition to termination of regional center designation when appropriate.

Additionally, Secretary Johnson recommended legislative reforms to improve the integrity of targeted employment areas, raise the minimum investment amounts for EB-5 petitioners, and require regional centers to file investment proposals with business plans and other organizational documents in advance of individual investor filings. Although USCIS intends to propose regulatory changes in these areas to the extent authorized by

Question#:	4
Topic:	Addressing Misconduct in the EB-5 Program
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

current law, statutory change in line with the Secretary's May 2015 recommendations would be welcome also.

Generally, legislative reforms that support Secretary Johnson's recommendations would create greater efficiencies and streamline USCIS' efforts to safeguard national security and integrity while ensuring the EB-5 program continues to realize its goal of stimulating the U.S. economy through job creation and capital investment by foreign investors. As always, USCIS welcomes the opportunity to provide technical assistance on any proposed EB-5 reform legislation.

Question#:	5
Topic:	Targeted Employment Areas
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

Question: On April 27, 2015, DHS Secretary Jeh Johnson wrote to Senate Judiciary Committee Chairman Grassley and Ranking Member Leahy. He recommended changes to improve the integrity of targeted employment areas (TEAs) by limiting the number of census tracts that may be used to create a TEA. As you know, the regulations governing the development of TEAs gave the states authority to determine what areas should be eligible for the reduced TEA investment amount-this has been the practice for 23 years. Why is it an issue now? Could DHS/USCIS have written a new regulation to address its concerns during that 23 year period to place more guidelines on the TEA designation process? Similarly, USCIS could have written new rules to increase the minimum investment amount, which Secretary Johnson also recommended. Why has DHS not done this?

Response: In setting priorities for regulatory action, USCIS considers a range of factors. Until recent years, the EB-5 program was underutilized, and there was little impetus for sweeping regulatory reform, including regulatory changes to increase the minimum investment amount and/or altering rules governing the designation of TEAs. In April 2005, the Government Accountability Office (GAO) noted in a review of the EB-5 program, "The number of visas granted under the EB-5 category has been considerably less than the approximately 10,000 designated annually by the authorizing legislation. According to State Department data, a total of 6,024 visas have been issued to alien entrepreneurs and their dependents since 1992."

The popularity of the EB-5 program increased dramatically in the last few years. At the end of FY 2007, there were 11 regional centers. Today there are more than 800. In FY 2007, USCIS received 776 Forms I-526, *Immigrant Petition by Alien Entrepreneur*, while in FY 2015, we received 14,373. In FY 2014, for the first time in the history of the EB-5 program, the demand for visas exceeded availability, and the visa category remains oversubscribed for participants from mainland China.

As EB-5 program popularity increased exponentially, and areas for improvement to the program were identified, USCIS began making significant efforts to update the regulation. We established an internal working group in FY 2014 to draft potential regulatory changes and held a listening session with stakeholders. In FY 2015, however, these regulatory changes were set aside in anticipation of EB-5 program reform legislation, which would have necessitated different regulatory action. As reform legislation has not been passed, USCIS has renewed its EB-5 regulatory efforts, and intends to propose potential regulatory changes, including ensuring consistency among TEA designations and increasing minimum investment amounts.

Question#:	6
Topic:	TEA Designations
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

Question: There have been allegations over the past several months that this program is being misused and abused, and that areas that should not benefit from TEA designation are nonetheless able to invest at the lower investment level. It is no mystery that this is directed at the ability of a state government to determine a high unemployment area for the purposes of the designation a Targeted Employment Area. When your agency receives a petition for an EB-5 investment in a Targeted Employment Area where the state has made the determination that the project is located in a high unemployment area, what sort of review do you conduct to see that the state designation is worthy of being recognized?

Response: Consistent with the regulations, USCIS defers to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area. However, for all targeted employment area (TEA) designations, USCIS must still ensure compliance with the statutory requirement that the proposed area designated by the state in fact has an unemployment rate of at least 150 percent of the national average rate. USCIS will review state determinations of the unemployment rate and, in doing so, can assess the method or methods by which the state authority obtained the unemployment statistics. Acceptable data sources for purposes of calculating unemployment include U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from the Local Area Unemployment Statistics). Additionally, state letters designating a TEA are usually valid for one year from the date of the letter. As such, USCIS reviews investor petitions and if a petition contains an outdated TEA letter, adjudicators will request an updated letter.

Question#:	7
Topic:	Money Invested Acquired by Lawful Means
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Louie Gohmert
Committee:	JUDICIARY (HOUSE)

Question: How does USCIS ensure that the money invested by an EB-5 applicant was acquired by lawful means?

Please state what specific steps you take in the screening process to determine if the funds come from a legitimate source.

Please describe that type and frequency of interactions that you have with partners overseas to make this determination.

Who makes the final determination about whether the funds are from a legitimate source?

Response: 8 C.F.R. § 204.6 (j)(3) outlines the evidence required to establish that the capital invested by the EB-5 petitioner is obtained through lawful means. Specifically, an EB-5 petition must be accompanied, as applicable, by foreign business registration records, business and personal tax returns filed within the past 5 years by the petitioner (in or outside the U.S.), and evidence of any other sources of capital. In addition, the petition must include certified copies of all pending governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgements against the petitioner from any court in or outside the U.S. within the past 15 years.

The burden of proof is on the petitioner to affirmatively demonstrate, based on a preponderance of the evidence, that EB-5 capital was obtained lawfully. Immigrant Investor Program Office (IPO) officers carefully review the evidence provided. If the evidence provided with the initial filing is found to be insufficient to establish that the funds were obtained lawfully, then the IPO officer will issue a request for additional evidence or, in some cases, a Notice of Intent to Deny (NOID).

If any of the evidence provided appears to be fraudulent or the veracity of the evidence is found to be questionable for other reasons, the officer will refer the case to the Fraud Detection and National Security (FDNS) EB-5 Division. FDNS personnel have access to numerous additional data sources and may conduct open source research, check for any relevant classified holdings and/or search Bank Secrecy Act reports collected and made available by the Financial Crimes Enforcement Network and lists maintained by the Office of Foreign Assets Control for additional relevant information.

In many cases, FDNS will send a request to a USCIS post overseas, or to the Department of State in the absence of a USCIS presence, to verify supporting information in person.

Question#:	7
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Upon return of the information, FDNS will provide it to the adjudicating officer as a Statement of Findings (SOF). Overseas verification requests have increased greatly with the establishment of IPO. In FY 2015, 67 such requests were opened in FDNS' system of record, FDNS-DS, and 30 were completed. The FDNS EB-5 Division expects that it will open more than 100 overseas verification requests in FY 2016. These requests are almost solely related to questionable source of funds claims.

Upon receipt of the response to a request for additional evidence, the NOID response, or the FDNS SOF, the IPO adjudications officer will generally re-evaluate the evidence of record and make a final adjudicative decision based on the preponderance of the evidence standard. If concerns were raised, USCIS will address them with the appropriate law enforcement agency.

Due to the high level of EB-5 participation by Chinese investors and the challenges inherent to verifying the source of overseas funds, the Chief of USCIS' IPO traveled to Beijing and Guangzhou, China in 2015 with the chief of the FDNS-EB-5 division. While there, they met with officials from China's Ministry of Public Safety and Security as well as other national, provincial and local-level officials to learn from the Chinese officials various mechanisms to augment USCIS' procedures for verifying questionable Chinese tax, income, identification, and other documents submitted with EB-5 petitions. In Guangzhou, USCIS met with officials from the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and Department of State (DOS), and observed DOS officers interviewing EB-5 petitioners. While in Guangzhou, USCIS EB-5 officials also had the opportunity to meet with the USCIS staff who conduct site visits when requested to answer questions about the legitimacy of documents and projects.

Question#:	8
Topic:	Investing Safeguards
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Louie Gohmert
Committee:	JUDICIARY (HOUSE)

Question: What safeguards has USCIS implemented to ensure that an applicant for an EB-5 visa has actually invested the money required under the statute, and the funds are at-risk?

For EB-5 applicants who are "actively in the process of investing," at what point in the process does USCIS follow-up with the applicant to ensure that the funds are actually invested and at-risk?

Response: At the time of the Form I-526 adjudication, EB-5 petitioners are required to either demonstrate that the full amount of capital has been invested and is at-risk or that there is evidence of a present commitment to invest the required amount of capital. At the Form I-526 stage, USCIS will review bank statements showing amounts deposited, evidence of assets which have been purchased for use in the new commercial enterprise, or evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock, among other evidence, to demonstrate that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk.

The governing statute for the EB-5 program allows for EB-5 applicants to be "actively in the process of investing" as an alternative to demonstrating that at the time of filing the Form I-526 petition the total minimum required amount of capital was already invested and placed at risk.

Although the statute allows for this flexibility, EB-5 regulations establish additional requirements to ensure that the funds committed to be invested or already invested are actually at-risk. 8 C.F.R. § 204.6(j)(2) specifically states that "evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petition is actively in the process of investing. The alien must show actual commitment of the required amount of capital." If the full amount of capital has yet to be invested, it is necessary for the investor to show he or she has access to lawfully sourced capital sufficient to cover the remainder of the investment amount.

EB-5 petitioners commonly demonstrate present commitment of the investment capital by entering into an escrow agreement. Petitioners transfer the minimum required amount of investment capital to an escrow account, and the immediate and irrevocable release of the escrowed funds is contingent only upon approval of the investor's Form I-526 and/or subsequent visa issuance and admission to the United States as a conditional permanent resident or, in the case of adjustment of status to conditional permanent residence,

Question#:	8
Topic:	Investing Safeguards
Hearing:	Is the Investor Visa Program an Underperforming Asset?
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approval of the investor's Form I-485. In these cases, USCIS reviews the escrow agreement to confirm that the investor is unable to unilaterally remove these funds from escrow, further safeguarding the investment and transfer of these funds into the new commercial enterprise. If the investor has the right to withdraw the investment funds, or if there is cause to question whether the funds will be released per USCIS' escrow policy, the petitioner will likely fail to demonstrate that he or she is actively in the process of investing the required capital in order to establish eligibility for the EB-5 visa.

At the Form I-829 stage, USCIS will require evidence verifying that the investor invested or was actively in the process of investing the requisite capital, and that the at-risk investment was sustained throughout the period of conditional residence. The Form I-829 generally must be filed by the investor 21 to 24 months after he or she is granted conditional permanent resident status. The adjudication of the Form I-829 serves as an important safeguard for the EB-5 program to confirm that the immigrant investor has invested the required amount of capital or substantially met that requirement, and sustained this action throughout the period of conditional residence.

Question#:	9
Topic:	Failure to Invest
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Louie Gohmert
Committee:	JUDICIARY (HOUSE)

Question: Have any applicants for the EB-5 visa failed to invest the amounts required under the statue and implementing regulations but still received an EB-5 visa? If so, please provide statistics about the frequency of this occurrence, information about who issued the visa and on what basis?

Response: USCIS does not maintain statistics requested in this question. However, the statute and regulations allow investors to petition for an EB-5 visa if they are "actively in the process of investing," but in order to be found eligible, petitioners must also demonstrate to USCIS' satisfaction that they have made a present commitment to invest the minimum required investment amount. Many regional center investors demonstrate the present commitment requirement by placing their investment capital in an escrow account, with the release of funds to the new commercial enterprise contingent only upon the approval of the visa petition and/or admission as a conditional permanent resident.

Visas are issued by the Department of State, which makes its own independent determination regarding whether the petitioner qualifies for visa issuance.

Question#:	10
Topic:	Iranian Investors
Hearing:	Is the Investor Visa Program an Underperforming Asset?
Primary:	The Honorable Louie Gohmert
Committee:	JUDICIARY (HOUSE)

Question: Federal regulations generally require that Iranian investors who seek EB-5 visas obtain a license from the Department of Treasury, Office of Foreign Assets Control (OFAC) to ensure that their capital investment funds are not prohibited from use. The license requirement may be waived by OFAC.

In how many instances has OFAC waived the license requirement for Iranian investors?

Does USCIS make an independent inquiry regarding the source of the capital investment funds to determine their legitimacy?

Response: Prior to October 22, 2012, persons who fell within the definition of "U.S. Persons" were obligated to acquire a specific Office of Foreign Assets Control (OFAC) license to provide financial services to a person in Iran, or ordinarily resident in Iran, in connection with their application to invest in the United States, or to engage in transactions in furtherance of such an applicant or petitioner's application in cases where the investment funds will originate from Iran. However, on October 22, 2012, OFAC amended its regulations to authorize U.S. Persons to export financial services to Iran in connection with an individual's application under the EB-5 program and E-2 Treaty Investor Program (whether or not they are registered brokers or dealers in securities). The general license does not, however, authorize U.S. persons to debit or credit an Iranian account (an account of an Iranian person held at a U.S. depository institution or a U.S. registered broker or dealer in securities) or direct or indirect transactions with banks in Iran whose property or interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, the Global Terrorism Sanctions Regulations, or any part of 31 C.F.R. chapter V other than part 560.

OFAC would be in a better position to address how many specific licenses were obtained for transfers of funds that occurred prior to October 22, 2012.

USCIS makes the same or a similar kind of inquiry into Iranian investors' source of funds as it does with all other investors' source of funds to determine that the funds being invested into the EB-5 program have been lawfully obtained. The regulations require that all immigrant investor petitioners, including all Iranian investors, submit evidence to show that all capital invested is from a lawful source. Further, every petitioner must document the source of funds and path of funds in order to establish that the investment was his or her own funds. For Form I-526 petitions filed by Iranian investors, USCIS adjudicators review the documentation provided to determine the date the funds were lawfully obtained and transferred from Iran and if further steps are necessary to ensure

Question#:	10
Topic:	Iranian Investors
Hearing:	Is the Investor Visa Program an Underperforming Asset?
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the investment from Iran meets the lawful source requirement, and whether the OFAC requirements were met. If, after review by a USCIS adjudicator, questions remain regarding the source or path of funds, USCIS does have resources, such as the Fraud Detection and National Security EB-5 Division, to provide a more in-depth investigation and to liaise with government partners as needed.